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A HISTORY

OF THE

SAN JUAN WATER BOUNDARY QUESTION,

AS AFFECTING THE DIVISION OF TERRITORY BETWEEN GREAT BRITAIN AND THE UNITED STATES.

W.F

By VISCOUNT MILTON, M.P.

COLLECTED AND COMPILED FROM OFFICIAL PAPERS AND DOCUMENTS
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RESPECTIVELY OF GREAT BRITAIN AND IRELAND
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PREFACE.

I NEED offer no apology for laying this statement before the Public, as I feel that upon an examination of the same, the importance of a question hitherto carefully veiled, will become apparent.

It is, however, necessary to apologise for the haste with which I have been obliged to put my materials together.

I have been desirous of laying before the Public some account of this question, preparatory to the discussion which must, at some period, and which will probably at once, ensue.

This history has been compiled mainly from documents published under the authority of the United States Senate; consisting of some of the letters, despatches, &c., which have passed between the Governments of Great Britain and the United States, and also of some of the communications between those Governments and their respective officers, naval and military, and between other persons more or less concerned in the conduct of affairs on the British-American Pacific coast.

I was at first doubtful whether I would not throw into the form of an Appendix the correspondence between the Commissioners respectively of Great Britain and of the United States, and between Lord Russell and Mr. Cass; but on further consideration, I felt that by so doing I should destroy the continuity of the story, and cast into the shade some of the most important of the papers bearing upon the question.

MILTON.

NOTE.

The two Maps presented with this Volume are fac-similes, so far as they relate to the Boundary question, of those originally produced in the United States. Portions of each not affecting the question have been cut off, in order to facilitate the binding.

It should further be noticed that the names of many places are stated differently in the British and American Papers and Maps.

The best Map or Chart to be obtained in this country, containing the names of localities as given by British geographers, is a Chart prepared from the survey of Captain Richards and the Officers of Her Majesty's ship *Plumper*, 1858-9.

This Chart is published by the Admiralty, and sold by J. D. Potter, Agent for Admiralty Charts, 31, Poultry, and 11, King Street, Tower Hill.

HISTORY OF THE SAN JUAN WATER BOUNDARY QUESTION.

CHAPTER I.

The foreign policy and colonial policy of Great Britain exercise a most potent influence for good or for evil upon the fortunes of her colonies and dependencies throughout the world; and whether some amongst them shall move upwards towards wealth and prosperity, or downwards towards stagnation and ruin, is contingent, in a great measure, upon the line of conduct adopted towards them by the Government at home.

Our domestic policy may, and must change with each change of Government, and with the varying fortunes of parties; but with reference to imperial questions—questions upon which depend the prosperity of extensive territories, and of millions of loyal and devoted British subjects, a consistent and well-defined policy should be marked out by public opinion, and should be followed by each successive Government. If each colonial minister is to be considered as entitled to regard our colonies as a field for the display of his own peculiar views and

idiosyncrasies; if orders carried by one mail are to be countermanded by the next; if every act connected with colonial government is to be distinguished by uncertainty and irresolution; the connection between the colonies and the mother country must cease to be of advantage to either party.

The vacillating and changing attitudes assumed by Great Britain towards her colonies have brought many of them to a state bordering upon bankruptcy; intending settlers have been afraid to settle upon them, and bankers and merchants have been afraid to invest capital in them, in consequence of the uncertainty which rests like a dark cloud upon their future. I am myself most deeply interested in the prosperity and onward progress of the British possessions in the north-west of the American continent. Their position during many years has been one of uncertainty, and consequent despondency, traceable, in great measure, to the inconsistency which has characterised our political relationship with the United States. The policy of that great nation has, on the other hand, been distinguished by the closest consistency.

In the year 1823, Mr. Monroe, then President of the United States, in his message to Congress, protested against the proposed interference of certain European powers in the struggle between Spain and her American colonies, in language to the following effect:—

"In the wars of the European powers, in matters relating to themselves, we have never taken any part, nor does it

comport with our policy to do so. . . . . We owe it, therefore, to candour, and to the amicable relations existing between the United States and those powers, to declare that we should consider any attempt on their part to extend their political system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered, and shall not interfere. Our policy in regard to Europe is not to interfere in the internal concerns of any of its powers. . . . . But in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness."

* * * * * * * * *

"This expansion of our population and accession of new states to our Union have had the happiest effect on all its highest interests. That it has eminently augmented our resources and added to our strength and respectability as a power is admitted by all. . . . . It is manifest that by enlarging the basis of our system, and increasing the number of states, the system itself has been strengthened in both its branches. Consolidation and disunion have thereby been rendered equally impracticable." (1)

This announcement has been improved upon by subsequent politicians, and the Monroe doctrine is understood as containing the conception—so dear to the people of the United States—that their peculiar institutions and form of government must ere long overspread the entire continent.

From the first promulgation of the above-mentioned views of President Monroe, the restless energy and unlimited resources of that powerful people

(1) President's Messages, pp. 257—267.

have been directed to the furtherance of the doctrine which goes by his name; and his policy has been illustrated (as is well known) by the determined opposition of the North towards Southern secession; the implacable hostility of the United States to the policy of France with reference to Mexico; and also, more recently, by the purchase (at an enormous price) of the inhospitable region of Alaska from the Russians; and by the overtures which they have lately made for the purchase of the Hudson's Bay territory. In the acquisition of Alaska, however, that determined opponent of the power of Great Britain on the continent of North America, Mr. Seward, saw the advantage of the United States, for he seeks, thereby, and by a kindred policy, to "crowd" Great Britain out of the Pacific, and eventually to compel the North American colonies to enter the United States federation.

I am well aware that there is a strong anti-colonial party in this country, and that it advocates an abandonment of the colonies. This party would meet any colonial question which might seem capable of embroiling the empire with other countries, by proposing the immediate cession or relinquishment of the territories with reference to which such questions arose.

If this were the general opinion, it would be useless to call the attention of the public to any colonial question in which other powerful and aggressive nations might be interested. It is, however, the opinion of the great majority of the people

of Great Britain, that she could not relinquish her colonies with advantage to herself, and that, even if she could, she is bound in honour not to do so, unless with the express assent, or at the express desire of the colonies themselves. I am not about to descant at any length in this place upon the well-known advantages which Great Britain has hitherto derived, and still continues to derive, from her possession of colonies. They form a natural outlet for her surplus population; and emigrants arriving in a well-governed colony are absorbed into the mass of its population, and remain well-disposed towards Great Britain. Until the resources of the colony are thoroughly developed, its population will prefer to purchase from the mother country, rather than from any other country, those manufactured articles which are necessary to their existence. On the manufacture of such articles, and upon ready markets for the same, the internal prosperity of this country mainly depends. At the present time those markets of the world (and they are few) which are open to the free competition of British commerce, are overcrowded with British manufactured goods. Supply is greater than demand, and our policy must aim at opening up new and unexplored regions to our trade. But at this very period, the United States are seeking to exclude our commerce, and to overshadow with their protective and selfish system those almost boundless territories, which a generous and consistent policy on the part of Great Britain might cover with loyal subjects, well-intentioned towards their mother country. But

further, the key of the East is the key of the world, and should the United States monopolise the eastern trade by the Pacific railroad, or the Isthmus of Panama, our power and influence as a nation must rapidly decrease.

It is absolutely necessary that Great Britain should make and preserve a direct communication with the East through the continent of America, the passages through which continent the United States will otherwise, ere long, close against us. This communication can be made by means of a railroad connecting our possessions on the Atlantic and Pacific seaboards, and would prove a benefit to ourselves and to the colonies.

But other arguments may be urged (beyond those which merely touch the public purse) against the abandonment of our possessions. Are the people of England content to live with the sole object of manufacturing goods for the rest of the world, at the prices which others choose to offer for them? to work, and see others reap the profits of their labour and ingenuity? Are British statesmen content to degenerate into mere managers of a vast business; to see other nations contending for power and precedence, and to remain indifferent and passive spectators?

Are we prepared to recede step by step from the territories which have been handed down to us, content with that easy but ignoble doctrine that our mission is to civilise the world, and then sink into oblivion?

But even if, consistently with her advantage, England might negociate a cession of her colonies,

I must venture to submit that she could not, consistently with her honour, dispose of or sell a portion of her territory, with the population inhabiting the same, and possessing the rights of citizenship jointly with Englishmen, unless by the express desire or consent of such inhabitants. This is a proposition which needs no argument to support it; for, as every man is bound to provide for the maintenance of his own progeny during infancy, so is every nation bound to sustain the life, interests, and nationality of its offshoots until they are able to maintain their positions and individual rights amongst the nations of the world.

CHAPTER II.

On a just and equitable solution of the so-called San Juan Water Boundary Question depends the future, not only of British Columbia, but also of the entire British possessions in North America.

The contention on this subject between Great Britain and the United States has extended over a period of more than twenty years, but the papers relating thereto have been, with the exception of a few selected documents, and extracts from documents, carefully concealed. I am at a loss to find any reason for this reticence, unless it has been caused by a dread of calling public attention to the subject. It is evident, therefore, that if any difficulties or complications now arise, or any misfortunes befall the colonies interested in the question, or any dishonour attach to this country, the blame cannot be said to rest upon the nation or upon the Houses of Parliament, but upon those individual members of successive Governments who have taken upon themselves the responsibility of refusing the information which has been repeatedly called for in the House. I have myself for many years taken a great interest in this and other cognate questions, and

I now feel it my duty to the colonies and to the British public to lay before them as full and as accurate a statement of the facts as I can draw up from the materials I have been able to collect.

Vancouver's Island takes its title from the discoverer of that name, who sailed through some of the seas by which it is surrounded, and drew up a chart of his voyage, being the earliest map of that portion of the globe. A glance at the map will show that the island is situate on the western coast of North America, and that a portion of it lies to the south of the forty-ninth parallel of north latitude.

It is separated on the north from British Columbia by St. George's Sound, or, as the United States geographers term it, the Gulf of Georgia. The Sound in the north is a broad open channel, tolerably free from islands, but towards its southern extremity it is divided into a number of channels by a large cluster of islands, of more or less extent respectively, termed by United States geographers the Haro Archipelago, which were formerly thought to be a part of the mainland of Vancouver's Island. The channel used by Vancouver, and laid down in his chart—being the straightest course from north to south, and, indeed, the channel best adapted for sailing vessels, if not for steamers—is the Rosario Strait, which intervenes between this cluster of islands and the Territory of Washington in the United States. Another channel was subsequently discovered, viz., the Canal de Haro, which separates this cluster of islands from Vancouver's Island; and, on account of its tortuous course,

and the absence of anchorage ground therein, except at its northern extremity, that channel is little used by sailing vessels.

These two channels meet at the south of the cluster of islands above mentioned, and join the Pacific Ocean through the Straits of San Juan da Fuca.

The important colony of Victoria—the capital of British Columbia—with the harbours of Victoria and Esquimault, is situate at the southern and eastern extremity of the Island of Vancouver; and the communication between these harbours and the eastern coast of the island, as well as with the mainland of British Columbia, is now carried on mainly by the Canal de Haro.

The entrance to this strait or canal is, however, commanded by the Island of San Juan, one of the islands of the group, and it will be seen that it is of the very last importance to the citizens of Vancouver's Island, and of the mainland of British Columbia, that in case of any disagreement with the United States they should hold possession of this key to the strait.

The Strait of Rosario is commanded by several of the islands which immediately fringe the mainland of Washington territory, as, for instance, by Cypress Island, and should the island of San Juan, commanding the Canal de Haro, fall into the hands of the United States, the inhabitants of Victoria and the inhabitants of the mainland of British Columbia could be cut off from intercourse with each other by the batteries of the United States erected on San Juan.

Further, the command of these two channels would give to the United States the entire control of the communications of our colonies on the mainland with the Pacific, which must be made through the Straits of San Juan da Fuca by one of the channels above mentioned, the northern passage, *viâ* Queen Charlotte's Sound, being narrow, intricate, and perilous in the extreme.

The Island of San Juan has, for the reasons given above, been aptly termed "the Cronstadt of the Pacific." Its conformation is such that a few batteries, skilfully placed, would render it almost impregnable. Imagine the position. Victoria, the capital, with the adjacent harbour of Esquimault, cut off from communication with British Columbia, and the Canadas, or "the Dominion," cut off from the seaboard of the Pacific!

There are at this period four railroad routes (one completed and three projected) on the continent of North America, from the Atlantic to the Pacific. They run throughout their entire course within United States territory.

Consider the exclusiveness, the protective policy, the jealousy of British commerce, evinced by the people of the United States, and, I would ask, is it probable that, when British trade has established a route through United States territory from west to east, from London to China and Japan and Australia, it will be allowed to pass free of impost by the United States?

Do we now compete on equal terms with the

merchants and manufacturers of the United States? Is not a tariff imposed on our goods entering United States territory which is intended to be absolutely exclusive? Do the lessons of the past or present teach us to confide in the generosity and magnanimity of future legislators? Is it not the duty, the interest, of Great Britain, to establish a route at any cost through her own territory, and shower down the rich blessings of her trade upon her own rather than upon the subjects of another Government?

Such a route was projected many years ago, running through some of the wealthiest territory in the world, capable of supplying us with corn at the cheapest rate; rich in coal, iron, copper, lead, and in gold; abounding with timber, stone, limestone, and brick clay; whose inhabitants enjoy a delightful and bracing climate, and in which it has been prophesied a race of men will grow up, vigorous, healthy, and energetic, to be the rulers of the destinies of the North American continent. Starting from the magnificent harbour of Halifax, the line would run to Quebec, along the northern shore of Lake Superior, between Lake Winnipeg and Fort Garry, to New Westminster, near the mouth of the Fraser river, on the Gulf of Georgia, or to Bute Inlet. To modern engineering the Rocky Mountains present no invincible obstacle, and the projected line, shorter by some hundreds of miles than the present Pacific Railroad, would be the most direct route for the commerce between London and China, Corea, Japan, and the Eastern Archipelago.

Such an undertaking might relieve the overstocked labour market of England, and the workmen employed upon it would develop the resources of a territory which would afterwards become their own. But of what use such hopes as these, if the gate of the Pacific is to be closed to Great Britain and the Dominion by United States forts? Shut out from the Pacific, the territory of which I have spoken must perforce join its interests with those of the United States, and be added to the great protective federacy against the commercial energy of the people of Great Britain.

If British interests on the North Pacific coast of America are to be protected from the possibility of injury, the Island of San Juan will form a portion of British territory, and will be strongly and skilfully fortified.

Having endeavoured to depict the gravity and importance of my subject, I shall sketch the history of the dispute which has been termed the "San Juan Water Boundary Question." I shall, wherever it is possible, allow the actors in the same to describe their deeds, and the views by which they were actuated, in their own language, occasionally drawing my own conclusions therefrom, and sometimes qualifying such descriptions when they appear to conflict with the information which I have been able to collect, both on the spot and since my return to this country.

CHAPTER III.

The Haro Archipelago, or cluster of islands above mentioned, has been described by a Government official of the United States in the following words[1] :—

"The Haro Archipelago is bounded on the north by the Canal de Haro and the Gulf of Georgia, on the east by Rosario Strait, on the west by the Canal de Haro, on the south by the Straits of Fuca. It contains seven prominent islands—viz., San Juan, Waldron, Orcas, Shaws, Blakely, Decatur, and Lopez, besides many small ones, some of them scarcely large enough to be worthy of special notice. The combined area of the island is about 170 square miles.

"The Archipelago occupies an important position in its relation to the other parts of this region. Lying just north of the eastern end of the Straits of Fuca, through which the currents of Paget Sound, and perhaps, also, of the Gulf of Georgia, flow during the rise and fall of the tides, it obstructs the currents flowing to and from the Gulf of Georgia, giving them various courses by deflection, and often producing, in many places, tide-rips sufficiently extensive to endanger small craft.

"The islands are separated by narrow, but very deep channels, *so deep, indeed, that the largest class vessels can pass through almost any of them.* This is the character of almost every narrow channel separating islands lying between the continent and Vancouver's Island, and has led many a sailor to compare these waters to the Straits of Magellan, where it is often difficult to find anchorage.

"In circumnavigating the Archipelago, scarcely a harbour

[1] American State Papers, p. 132.

is to be found capable of accommodating vessels of even ordinary size, although there are many places where anchorage may be found, and where vessels could lie in safety under the lee of some island during storms from certain quarters. But within the nest, as it were, there are *some of the most beautiful harbours in the world.* There is among them a perfect network of channels, all sufficiently deep to be navigated by the largest vessels, and unobstructed by rocks, except in a few localities, which are marked on the chart.

"Of the entire area of the islands, it is estimated that about *sixty square miles is arable land*, and about *eighty square miles is pastoral land, covered with nutritious grass, which retains its verdure nearly throughout the year.* The remainder is principally covered with forests of the coniferous trees of that region, consisting of fir, pine, and cedar, which, on some portions of the islands, attain great size and beauty. Part of that which is described as arable and pastoral land is also timbered to some extent, and would necessarily have to be cleared before the soil could be cultivated. The islands are well watered by lakes and running streams. Although the portion of open country is small, yet, distributed over the whole group, are patches of prairie land; smooth swelling slopes and mountain sides, covered with luxuriant grass to their summits, giving to the wild and solitary tracts a pleasingly rural aspect.

"A noticeable feature in the topography of these islands is the peculiarity that the mountains at the northern end are almost universally the most elevated, and gradually diminish in height toward the south.

"Another striking feature is that the southern slopes are almost invariably destitute of timber, but are covered with a luxuriant grass. This peculiarity is so striking as to attract the attention of all who traverse these waters; and in the spring time and early summer, when the grass is green, and the flowers are in bloom, the prospect is enchanting.

"The absence of trees in these localities may be attributed to the fact that the soil is very shallow, overlying masses of

rock, but sufficiently deep to sustain grass assisted by the direct rays of the sun. These islands are particularly adapted to raising of sheep, as has been fully demonstrated *by the Hudson's Bay Company on San Juan Island. The mutton of Vancouver's and San Juan Islands is remarkable for its delicacy of flavour, which may be accounted for by the peculiar properties of the grazing.*

"The same favourable circumstances exist in the other islands: a mild climate, absence of beasts of prey (except on Lopez Island), and the abundance of sweet nutritious grass, even to the summits of the mountains, during the entire year. The deer on the islands are found in mid-winter in most excellent condition. *On San Juan Island the sheep increased so rapidly, it was difficult to find fresh pasturage for them near the Hudson's Bay Company's establishment.* The average net weight of the sheep, when full grown and fat, is fifty pounds; of the fleece, three and a half pounds.

"Coal and limestone are found on several of the islands.

"Fisheries were formerly carried on at the several localities, and they could easily be made very productive and profitable.

"Trees, of great value for their timber and resinous properties, grow on all the larger islands.

"Although much of the land is mountainous, and only adapted to grazing purposes, these islands are as valuable, agriculturally, as the settled portions of *Vancouver's Island, which they resemble in general character.* (1)

"It might be mentioned, incidentally, that these islands, for the most part, belong to the Indians of the Washington Territory; the Lummies claiming Orcas, Blakely, Decatur, and part of Lopez; and the Clallams a part of San Juan. The whole inside of the north-eastern part of San Juan formerly belonged to a tribe kindred to the Lummies, and now extinct.

"It is *in a military and naval point of view*, however,

(1) It is clear that these islands are "natural appendages" of Vancouver's Island, which they so narrowly resemble.

that this Archipelago possesses the greatest value, embracing, as it does, *some of the finest harbours in the territory;* commanding Bellingham Bay and Admiralty Inlet; and, in fact, forming the key to the whole of the Puget Sound district. The interior passages and bays are capable of being entirely closed by fortifications, which is not the case with our other possessions on the Sound; and the islands themselves command all the adjacent waters. They are, in fact, the only check upon the preponderance which the ownership of Vancouver's Island gives to Great Britain in this quarter."

The island of San Juan (named by Capt. Wilkes during his survey Rodgers' Island; and sometimes also called Bellevue Island), the largest, and, from its geographical position, the most important, of the group, has been described by the same United States official as follows (1) :—

"San Juan Island is the most western (2) of the Haro group, and has an area of about fifty-four square miles. Its greatest length is about fourteen and a half miles, its general shape being very irregular; the width varies at different localities, its widest part is about six and a half miles. Low ranges of hills trend along its eastern and western shores, those on the western side being the highest, Mount San Juan, in this range, having an elevation of about 1,000 feet. These ranges slope out towards the north, and there are no elevations of any consequence on the northern shore of the island. Between these hill ranges near the centre of the island, lies a basin-like country, gently undulating in its character. There are extensive prairies in several localities, and from the south end of the island to within a short distance of its northern extremity, flocks can feed on green grass almost throughout the year. The greatest amount of arable land is found within the southern third of the island.

(1) American State Papers, p. 136.

(2) This is not strictly true; Henry Island and Stuart Island lie to the west or north-west of San Juan.

"Bellevue Prairie, situated on the lower end of the island, is about two miles long, by half a mile wide. Oak Prairie, which takes its name from the groves of oak scattered over it, containing about 1,000 acres, is bounded on the north and west by the hills along the west shore that extend across the island at its greatest width. Some of these hills are grassy to their summits, while others are more or less timbered.

"Immediately north and west of these hills lies a beautiful valley, stretching towards the north end of the island. The southern end of this valley contains several hundred acres of meadow land, but on the north it is heavily timbered. The land contained in it is all apparently fertile, and around it the hills are covered with a luxuriant growth of grass. This valley lies immediately opposite to Henry Island, and adjacent to good harbours.

"The north end of the island contains much good land, now covered by a heavy forest, but when divested of this, can be brought into profitable cultivation. In this region, there is a grove of large cedars, very valuable for timber.

"One third of the entire area of this island, or about 12,000 acres, is well adapted to cultivation, and nearly all the remainder to pastoral purposes. The soil of the arable portions is excellent, with the exception of Bellevue Prairie, which is somewhat gravelly.

"Upon this island are at least four beautiful lakes. From some of these flow rivulets of sufficient size and force to produce good water power, but as yet there are no inducements for the erection of mills, as the timber of the adjacent stores of Puget Sound, is superior to that of the island, the latter having all more or less suffered from frequent conflagrations; but in a few years more, when the husbandman shall begin to receive returns for his labours in rich crops of grain, some of these sites may be selected for erecting mills to prepare the produce for distant markets. A circumstance of great importance in connection with this island is the existence upon it of extensive deposits of limestone. It is found near the southern end, in the vicinity of the *Hudson's Bay*

Company's Station. On the western shore, near the base of Mount San Juan, immense masses raised up into perpendicular walls, are seen at several localities, covering an area of many acres. The north-eastern corner of the island is composed of an extensive ledge of the same material. A very small island (O'Neal's), lying close to the north-east end of San Juan Island, containing only a few acres, is composed almost entirely of limestone. Tested by acid and burning, it proved to be of superior quality; it exists in sufficient quantities not only for lime, but might be profitably quarried for building stone. The value of these deposits can better be appreciated from the fact, that up to the time of the discovery of limestone on this island, it was *not known to exist at any point on Puget Sound, within United States territory*,(1) and for building purposes it was necessary to procure all the lime used from California or *Vancouver's Island.* In the vicinity of the southern end of the island, are, perhaps, the best fishing grounds on Puget Sound. Great quantities of halibut, cod-fish, and salmon, are taken by the numerous tribes of Indians, who, at proper seasons, resort to this vicinity for the purpose of fishing. *The Hudson's Bay Company* were formerly in the habit of putting up at this place from 2,000 to 3,000 barrels of salmon alone, which were bought from the natives. Persons supplied with the proper appliances for carrying on a fishery would find it a very profitable vocation.

"At the southern end of the island there is a large bay, known as Ontario Roads, where vessels are well protected from the prevailing storms of this region, the water near the shore is not deep, and should it ever be desirable to build a wharf at this point, it would require one several thousand feet in length to reach three fathoms in low water. The entrance to this roadstead, from the Straits of Fuca, is through a very deep channel, known as Little Belt Passage,(2) separating this island from Lopez Island. It is a very convenient and

(1) This may be noticed as evidence that these islands are "natural appendages" of Vancouver's Island, rather than of the mainland, their geological formation being identical with that of the former.

(2) Through this passage the compromise boundary line would run.

favourite resort for vessels escaping from storms which often, in winter season, very suddenly arise in Fuca Straits. On the north-western end of the island are several bays, well protected by Henry Island, forming good harbours for vessels of light draught."

I can fully endorse this admirable and picturesque description of the island of San Juan, having personally visited it, and, on more than one occasion, sailed through the channels which surround it.

The other islands of the group were described by the same authority as follows:(1)

"HENRY ISLAND.

"This is a small island, lying close to the north-western shore of San Juan Island, containing about a thousand acres. Its topographical features resemble that portion of San Juan adjacent to it, and it may be considered as a part of that island.

"STUART, JOHN'S, AND SPIEDEN ISLANDS.

"These islands and several islets lie immediately north of San Juan Island, to the south and east of the Canal de Haro, and west of President Passage. Spieden Channel separates them from San Juan Island, and they are separated from each other by several small and intricate passages. Their combined area is about six square miles.

"Stuart, the most northern of the group, is the largest; it lies about midway between the southern end of Salmua and northern end of San Juan, and has an area of three and a half square miles. At its western end there is a mountain peak, 500 or 600 feet in height, from the summit of which there is a good view of the entire island, as well as of a large extent of surrounding country. It contains but a few hundred acres of arable land, the island being rough and hilly; it has two beautiful little harbours, one at its north side and the other at its south-eastern side, upon the shores of

(1) American State Papers, p. 138.

which are magnificent quarries of sandstone and slate. These materials, so valuable for building purposes, are very limited in quantity throughout Washington Territory, and a locality like this is therefore of great value. On one of the harbours are extensive Indian fisheries. The other islands of this small group appear to be comparatively unimportant.

"WALDRON ISLAND.

"Waldron Island lies to the south and east of the Canal de Haro, and north and west of President Passage, and contains about five square miles. Its southern end consists of a perpendicular bluff of sandstone and conglomerate, nearly 200 feet in height. The eastern shore, composed of the same material as far as the north-east end of the island, is bold and uninviting. Strong tidal currents sweeping through the narrow passage between this and Orcas Island are gradually changing its character. While this portion is hilly, the western half is low land, and, when divested of the forest which covers it, might yield abundant crops, subjected to cultivation. Within this region is a small grassy prairie, containing about 100 acres. The hills on the eastern half of the island contain much good grass. The island has no harbour, although good anchorage in calm weather may be found all along its southern and western shores.

"PATOS ISLAND

"(Gourd Island of Capt. Wilkes).

"SUCIA GROUP

"(Percival Group of Capt. Wilkes).

"MATIA GROUP

"(Edmonds Group of Capt. Wilkes).

"BARNES, CLARKE, AND SISTERS ISLANDS.

"This chain of islands lies at the south end of the Gulf of Georgia, and forms the breakwater which divides it into the two channels which surround the Haro archipelago. Their combined area is about two and a half square miles. The sandstone, which is the principal geological formation, is too soft to be valuable as a building material, and in places where

it is exposed to the action of the waves it is worn into deep hollows.

"ORCAS ISLAND

"(Hull's Island of Capt. Wilkes).

"Orcas Island lies immediately south of the chain of islands already mentioned as breaking the continuous flow of waters of the Gulf of Georgia into the Straits of Fuca, and to the north of Shaw's, Lopez, and Blakely Islands. It is bounded on the east by Rosario Strait, and on the west by President Passage, which separates it from San Juan Island.

"It is the largest and, with the exception of San Juan, the most valuable island in the Archipelago. At its northern end it is about four miles wide, and runs off towards the south-east and south-west, making its greatest width from east to west about thirteen miles, and its greatest length from north to south about nine miles, containing an area of about fifty-five square miles. There are two main ridges of mountains trending in a general direction a little east of south and west of north, which are in many places exceedingly precipitous and rugged. The eastern range, bordering on Rosario Strait, is much the highest, Mount Constitution, its highest peak, having an elevation of 2,500 feet. The highest peak in the corresponding western range is Turtle Mountain, 1,600 feet in height.

"Between Point Thompson, the north-eastern point, and Point Lawrence, the most eastern point, the shore is so rocky and inhospitable that anywhere along it even small boats would fail to find a safe harbour or anchorage. From Point Lawrence to Obstruction Passage the coast is much less bold, and contains several little bays, into which pour rivulets from the mountains, watering small but beautiful valleys.

"There are two large bays and one small one on the southern side of the island. Ironsides Inlet, the most eastern, is the largest. It is about a mile wide, varies in depth from five to fifteen fathoms, and extends about seven miles into the island, within a mile of its northern end, thus nearly cutting it

in two. Guerriere Bay, about three miles to the westward, is about three miles in length and a mile and a quarter in width, and has a depth of from five to fifteen fathoms. Both of these bays are excellent harbours. There is a small triangular bay, known as Fishtrap, extending a short distance into the south-western end of the island, with its greatest depth ten fathoms. Within Ironsides Inlet, particularly towards the north end, are several beautiful spots of agricultural land and good timber, having the advantage of being immediately adjacent to an excellent harbour. Streams, having their sources in lakes in the mountain gorges, empty into the bay. One of the most pleasing prospects in this region, and especially along the shores of Orcas Island, is the frequent recurrence of beautiful cascades.

"A stream of water, after traversing for several miles a beautiful valley containing some good meadow land, empties in Guerriere Bay, near its head. The largest stream in the island empties into Fishtrap Bay. The land in this vicinity is beautifully located, and is well adapted to agricultural purposes.

"Between this place and the extreme western point of the island there is scarcely a locality of agricultural value; but leaving this and travelling towards Point Doughty, after passing one mountain range, we enter a region where the land becomes level and the soil rich and productive.

"There are some localities—one or two on Ironsides Inlet, and one at least on Guerriere Bay—where there is excellent water power, but the timber is not of the best quality at those points, as the Indians, and the white men too, in search for deer, have from time to time fired the forest, and thus greatly injured the growth of the trees. Doubtless, hereafter, when more desirable timber of other localities, especially on the adjacent shores of Puget Sound, has become somewhat exhausted, mills will be erected in these beautiful harbours.

"A very important feature of this island consists in the excellent pasturage which exists on the mountain slopes. The grass is green during every month of the year; and on the

south side of Mount Constitution even almost to the very summits. Sheep, goats, and cattle, placed upon the island would thrive and multiply, without the necessity of special care, as there are no beasts of prey to molest them. Deer and elk are the only quadrupeds of the larger species on the island, and a few years ago these were very numerous. The latter are now rarely seen, and the former are, year after year, rapidly disappearing before the approach of the white man, and in a few seasons will not be seen upon the island. While the lower lands present the character of alluvials, the mountains are composed of trass, syenite, and quartz, and afford no valuable stone for building purposes.

"A deposit of coal is found near Point Doughty at the north-west end of the island, similar to that at Nanaimo on Vancouver's Island and at Bellingham Bay on the mainland. The extent of this deposit is not known, but, should future explorations make as favourable developments as are anticipated, a railroad of three or four miles could be easily constructed that would convey the coal to the excellent harbour of Ironsides Inlet.

"SHAW'S ISLAND.

"Shaw's Island lies south of the west end of Orcas Island, from which it is separated by Harney Channel, and is bounded on the east by Frolic Strait, separating it from Lopez Island, and on the south and west by President Passage, separating it from San Juan Island. It contains about eight square miles. It is of very irregular shape, and its shores are indented by numerous small bays. In its interior there are no prominent peaks, though the surface is uneven and much broken by hills and valleys; the latter are small and generally very swampy, and are rendered almost impassable by thorny bushes everywhere heaped up in tangled masses. In many places it is almost as difficult to traverse the higher ground, owing to the under-growth, which consists mainly of small pines and firs. The timber, consisting of fir and cedar, is small and scattered. Here and there are small patches of

arable land which, in the aggregate, would hardly exceed 300 acres on the entire island.

"OBSTRUCTION ISLAND.

"This small island is between Rosario Strait on the east, and Ironside Inlet on the west, and is separated by narrow passages from Orcas Island on the north, and Blakely Island on the south.

"BLAKELY ISLAND.

"Blakely Island lies immediately south of Obstruction Island, from which it is separated by a narrow passage, and is bounded by the same bodies of water as the latter on the east and west, and is separated by Thatcher's Pass from Decatur Island on the south. This island in its general shape is nearly square (it is a little longer from north to south than from east to west). It rises from the water almost like a pyramid, its highest peak, which is about 1,050 feet high, being a little north of the centre of the island. It contains about six and a half square miles, and throughout its extent is mountainous and rugged, presenting but few localities of even very limited area which might be profitably cultivated. Its shores are all more or less precipitous and rocky. The timber has been much injured by frequent fires, for this reason there are no inducements for lumber-men. At least in one place (perhaps in more) there is excellent water power. Grass flourishes on the slopes of the mountains. Near the centre of the island is a beautiful lake of crescentic form, about two miles in length, and about 400 or 500 yards in width; its outlet is a rapid stream of considerable force, which empties into a small bay on the south-western side of the island.

"The only profitable purpose to which this tract of land could be placed, would be that of grazing. In this particular it possesses the advantages enumerated in Orcas Island.

"DECATUR ISLAND.

"Decatur Island lies immediately south of Blakely, from which it is separated by Thatcher's Pass. It is bounded

on the east by Rosario Strait, on the south and west by Macedonian Crescent, a bay lying between it and Lopez Island. The area of this island is about four square miles; its extreme length from north to south being three and a half miles; its width about two miles. In its general shape it is quadrangular, resembling Blakely Island. About one fourth or more of its area is low land, well adapted to cultivation. On its eastern side there is a harbour, well protected by its natural configuration from the prevailing south winds, and a small island, known as James's, immediately adjacent to it in Rosario Strait, leaves it only exposed to storms from the north-east, from which quarter violent winds very rarely blow in this region.

"The shores are generally abrupt and precipitous; those on the north being rocky, while those on the south are composed of alternate layers of sand and clay; and their bold bluffs show the continuous action of the waves which for ages have been dashing against them. Evidences of land slides of limited extent, which have occurred, apparently very recently, gave further proof that the billows are changing them to such an extent that, in a few years more, their contour will be so much altered, that their present topographical features will be no longer recognisable.

"Several small streams empty into the bay mentioned as existing on the eastern side of the island; and in this vicinity there is much good cedar timber, which, growing in the low moist lands, has escaped the repeated fires which have swept through the forest.

"The abundance of deer always found upon this island is evidence of its valuable grazing properties.

"LOPEZ ISLAND.

"Named after Lopez de Haro (Chauncey Island of Capt. Wilkes).

"Lopez Island is bounded on the north by Frolic Strait and Ironsides Bay, on the east by the Macedonian Crescent and Rosario Strait, south by Rosario Strait, and west by Little Belt Passage and Ontario Road, which separate it

from San Juan Island. It is very irregular in shape, being characterised, especially on its eastern shore, by deep indentations, which in their formation seem to follow no regular law. Its greatest length from north to south is about ten miles; its greatest width from east to west about four miles; and it has an area of about twenty-eight square miles. At its southern end the land rises into a mound, which is nearly 500 feet in height, known as Watmaugh Head, and is a very prominent landmark for vessels in the Straits of Fuca. The southern coast is abrupt and broken, while to the north there are land-locked bays and beautiful harbours. A body of water lying to the west of Blakely and Decatur Islands, and bounded on the south and west by Lopez Island, called the Macedonian Crescent, is an extensive and well-protected harbour. This bay is studded with small islands covered with verdure.

"In many places on the eastern side of Lopez Island the shore is rocky, but on its western side the soil is alluvial; by washing away it has become in many places high perpendicular bluffs. The interior of the island contains much level land, well adapted to cultivation, and near its centre is a prairie of nearly a square mile in extent; there is also a smaller one near its northern extremity. As on the other islands mentioned, the timber has been much injured by fire. There are scarcely any trees of large size upon the island, except in a few low and swampy places. It is not very difficult to traverse much of its extent, especially about its centre; but near the northern end, tangled bushes and fallen timber render it a difficult matter, with great toil and trouble, to accomplish more than a mile an hour.

"There are permanent streams of water in several localities; and in many places, where the land might be too rocky for profitable cultivation, there is always good grass. Upon this island alone, of the entire group, was found any positive evidence of the existence of beasts of prey. Wolves are numerous, and of the largest species known to exist on our continent; why they should be found here and not on Orcas

and other islands of the Archipelago, is somewhat remarkable. Formerly there were a few of these animals on San Juan Island, but in a very short time after its occupation by white men they almost entirely disappeared, and are now no longer any annoyance to flocks. So it will be on Lopez after a few persons have taken up their abode there.

"One-third of the area of this island, perhaps, might be subjected to cultivation, but the greater part of this is still covered with trees, which it would require much labour to clear away. Much of the remaining two-thirds, although rocky, is covered with grass enough to support many hundreds of sheep and cattle. On its eastern and southern side there are a good many fishing grounds, where the Indians yearly take great numbers of salmon and halibut. At one of these localities, on the eastern side, there exists a small but very shallow bay, into which empties perhaps the largest stream of the island. At this place the Hudson's Bay Company formerly had a small trading station."

Great as are the natural advantages of these islands, they sink into insignificance when compared with the importance of the Archipelago, looked at from a naval or military point of view. In proof of this I cannot adduce stronger evidence than the report of the late United States General, Persifer A. Smith, who visited these islands while in command of the military department of the Pacific.

This report was addressed to the President of the United States, dated December, 1857, and stated as follows (1):—

"When I had the pleasure of meeting you in Washington, I intended to speak to you on a subject of great importance connected with the boundary between the United States and

(1) American State Papers, p. 52.

the British possessions north of them on the Pacific coast. The line, after having followed the forty-ninth parallel to the Sound dividing the island of Vancouver from the continent, is to run south, taking the main channel to its intersection with the straits of Juan di Fuca, and then west through those straits to the ocean.

"At this intersection lies a group of islands just north of the end of the straits, commanding the entrance into the Sound and opposite to the entrance of Admiralty Inlet and Puget's Sound in our own territory. These islands form a naval harbour that may be defended against any force if they are fortified as they may be, and the nation that disposes of them thus will absolutely command, not only Queen Charlotte's Sound, but all those splendid harbours in our territory on the waters of Admiralty Inlet and Puget's Sound, as well as those on the straits of Juan di Fuca and the navigation of that inlet. These harbours are the best on the Pacific coast, for, with the timber that covers the hills bordering on them, and the coal in the adjacent territory as far south as Gray's Harbour, they possess the great advantage of a rise and fall of tide of twenty-one feet, rendering the construction and use of docks easy and cheap.

"I visited these waters in 1849-50, and on my return represented to the President the immense importance of the islands referred to; and afterwards, at his request, gave Governor Stevens, then about to start for Washington Territory, a written memorandum in relation to the subject."

General Tatten, again, the Chief Engineer of the United States army, after a tour of inspection through the region of which we are speaking, made an official report to his Government in the following terms[1]:—

"The fitness of this island (San Juan) for a permanent fortification, or for a military station of any kind, depends upon its relation to so much of our water frontier as lies along

[1] American State Papers, p. 133.

the Straits of Fuca, and its water communication with the Gulf of Georgia.

"This particular subject was, therefore, kept in mind while I was pursuing my general examination of the north-west coast. It directed the particular course of my inspections of those waters, and led me to extend my explorations as high up as Fraser River.

"I find nothing in the magnitude, form, or position of San Juan Island that will admit of the treatment for such a purpose, separate from general military considerations—those only with which I have anything to do—and I now proceed to give, as briefly as I can, the convictions that have arisen in my mind after mature reflection.

"Great Britain, by owning the whole of Vancouver's Island, of which the southern shore bounds the Straits of Fuca on the north, possesses, just within its southern extremity, the admirable man-of-war harbour of Esquimault, and she now occupies it as a naval station, having present there, at the time of my visit, one line-of-battle ship and four war steamers. This harbour has, in a high degree, every internal convenience, facility of ingress and egress at all times, and perfect defensibleness, at a moderate cost, by fortifications, should such defence be considered necessary at future times.

"My first remark on these circumstances is, that, possessing Esquimault harbour, the ownership of the San Juan Archipelago, or of that island alone, is not necessary to Great Britain for her own occupation, either for defensive or offensive purposes; because, while occupying Esquimault harbour, *and enjoying naval superiority*, she will command completely, so far as local position will enable her, the Straits of Fuca, and all other waters within Cape Flattery, including Puget Sound, Admiralty Inlet, and all the channels and passages of the San Juan Archipelago. All our commerce and communications therein will be interrupted, or exposed to the greatest hazards.

"With superiority afloat she will need no fortifications in the Archipelago in order to command the passages. Its quiet

and pleasant waters may be much resorted to by her cruisers, but the place of refreshment, rendezvous, and, if need be, of refuge, will, because there can be no better, be Esquimault itself. Indeed, a fortified anchorage at San Juan island, for instance, would not be essentially nearer, and would no better overlook our harbours of Dungeness, Port Discovery, Sequin Harbour, Admiralty Inlet, Puget Sound, &c., than that of Esquimault.

"Neither does Great Britain need San Juan Island, nor any other island in the group, for the purpose of defending by fortifications her communications with the Gulf of Georgia.(1)

"Such a system would demand numerous works to overlook the many navigable passages through the group, while the same naval force that will be indispensable for other purposes, will be precisely the best description of force for this defence, and for interception of, and resistance to, expeditions from our distant shores.

"If, therefore, the Archipelago be assigned to Great Britain, it will hardly be the seat of any naval or military establishment. Possibly, with the growth of the country, some establishments there may be deemed to need slight defences against predatory raids, but nothing of that sort can occur within any reasonable time; and nothing is likely to happen in that way to bear upon our present question. But even if it be her wish to fortify them, her desire to retain the island arises, I am convinced, much less from a belief that such a military or naval station is necessary to her interest in that region, than from a knowledge that to us they will afford military advantages quite important, and not otherwise to be had.

"This leads me to remark, in the second place, that by the establishment of the division line between the two countries in the Straits of Haro, we shall, in some sort, have compensation for the advantages Great Britain enjoys by owning the whole of Vancouver's Island, and maintaining a predominant naval force at its southern extremity, since it

(1) I must beg respectfully to differ from this opinion.

will then be in our power to react with more or less effect, according to our energy and enterprise, upon these interior waters, by securely fortifying an anchorage at San Juan Island, or some other place close upon the Haro channel.

"The presence, under the shelter of such fortifications, of fast armed steamers, would exercise an important influence upon the communications between the Straits of Fuca, and the Gulf of Georgia, Frazer River, &c., would at all times threaten and harass that communication, and completely command it whenever it should happen to be without the actual presence of a strong convoy.

"It is easy to see that no such effects could be looked for, with the *naval mastery against us*, if our nearest fortified position were some forty or fifty miles distant from the main channel, which will be the case if the Rosario Strait is to become the boundary.

"My conclusions, from these and such like considerations, are, that the possession of the San Juan group of islands is strategically of high importance to us; that without this possession, there can be no escape or relief from the paralysis that adverse naval predominance will impose on our coasts and waters inside Cape Flattery; and that so far as considerations of a different nature admit, or can be materially aided by such influence, this importance can hardly have too much weight given to it."

It may be observed here, that the General, in stating that the island can be of no service to Great Britain, proceeds on the assumption that she would retain her naval supremacy.

CHAPTER IV.

The boundary line between the United States and the British possessions in North America has been defined by various treaties and conventions, including the unfortunate Ashburton treaty, by which Great Britain virtually ceded a large tract of valuable territory to the United States. The lands lying between the Rocky Mountains and the Pacific Ocean, and between 42° and 54° 40′ of north latitude, formed, during a long period, a kind of debatable ground, to which claims were advanced by both countries.

The parties most deeply interested in the question of proprietorship were, on the part of Great Britain, the Hudson's Bay Company and the North-West Company. These companies depended for their existence upon the absolute and undivided possession of extensive wastes, forming a kind of preserve for the wild animals in whose furs they traded. Through these wastes their hunters, Indian and half-caste, roamed, and their agents, established in places available for trade, collected furs and forwarded them to the central depôts. Between the respective agents of these rival companies the fiercest animosities grew up, and numerous were the skirmishes and fights which took place between the hunters and Indians who owned allegiance to the Hudson's Bay Company and

those who were attached to the North-West Company. The latter was at length driven from the field, or merged into the former. These companies have been the pioneers on the part of Great Britain in the settlement of the north-west of America, just as the backwoodsmen have been the pioneers of the United States in the settlement of the west; and the occupation of the Hudson's Bay Company, or of the North-West Company, by their agents, must be taken as occupation by Great Britain.

In the year 1788, Lieutenant Meares, of the British navy, discovered and entered the mouth of a river (now called the Columbia) the head waters of which rise on the western declivities of the Rocky Mountains, within British territory, and which flows down south and west into the Pacific Ocean. About the year 1805, and in subsequent years, the British North-West Company established their posts on the main branch of the river, being induced to do so by the easy communication it gave them with the Pacific through a country at that time unsettled by any civilised power.

In the year 1792, Captain Gray, an American merchant captain, entered the mouth of the river, and, from the name of his vessel, it received the name of the Columbia River. In 1805-6, Captains Lewis and Clarke, Americans, descended the river from the Rocky Mountains to the Pacific, and passed the winter on its banks.

Subsequently a company of fur traders set up a trading settlement at the mouth of the river,

giving it the name of Astoria, and a small military post was established for its protection. This fort was in the possession of Great Britain at the conclusion of her war with the United States, commenced in 1812, and, being claimed on the part of the latter country, was given up to her under the first article of the treaty of Ghent, 1814, express reservation being made by Great Britain in respect of her claims to the whole of the territory surrounding the fort, and upon which territory the fort and settlement was then declared to be an encroachment. By the third article of the convention between the United States and Great Britain, in 1818, it was agreed as follows:—

"That any country that may be claimed by either party on the north-west coast of America, westward of the Stony Mountains, shall, together with its harbours, bays, and creeks, and the navigation of all rivers within the same, be free and open, for the term of ten years from the date of the signature of the present convention, to the vessels, citizens, and subjects of the two powers; it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of the said country; nor shall it be taken to affect the claims of any other power or state to any part of the said country; the only object of the high contracting parties in that respect being to prevent disputes and differences amongst themselves."

The arguments, by which the claim of the United States to the territory which I have termed the debatable ground is supported, are thus put by a United States authority, Mr. Wheaton.(1)

(1) Wheaton's "Elements of International Law." 6th Edition, p. 229.

"1. The first discovery of the mouth of the river Columbia by Captain Gray, of Boston, in 1792; the first discovery of the sources of that river, and the exploration of its course to the sea, by Captains Lewis and Clarke, in 1805-6; and the establishment of the first posts and settlements in the territory in question by citizens of the United States.

"2. The virtual recognition by the British Government of the title of the United States in the restitution of the settlement of Astoria, or Fort George, at the mouth of the Columbia River, which had been captured by the British during the late war between the two countries, and which was restored in virtue of the 1st Article of the treaty of Ghent, 1814, stipulating that 'all territory, places, and possessions whatever taken by either party from the other during the war,' &c., 'shall be restored without delay.' This restitution was made, without any reservation or exception whatsoever communicated at the time to the American Government.

"3. The acquisition by the United States of all the titles of Spain; which titles were derived from the discovery of the coasts of the region in question, by Spanish subjects, before they had been seen by the people of any other civilised nation. By the 3rd Article of the treaty of 1819, between the United States and Spain, the boundary line between the two countries, west of the Mississippi, was established from the mouth of the river Sabine, to certain points on the Red River and the Arkansas, and running along the parallel of 42 degrees north of the South Sea; his Catholic Majesty ceding to the United States 'all his rights, claims, and pretensions to any territories east and north of the said line; and' renouncing 'for himself, his heirs, and successors, all claims to the said territories for ever.' The boundary thus agreed on with Spain was confirmed by the treaty of 1828, between the United States and Mexico, which had, in the meantime, become independent of Spain.

"4. Upon the ground of *contiguity*, which should give to the United States a stronger right to those territories than

could be advanced by any other power. 'If,' said Mr. Gallatim, 'a few trading factories on the shores of Hudson's Bay have been considered by Great Britain as giving an exclusive right of occupancy as far as the Rocky Mountains; if the infant settlements on the more southern Atlantic shores justified a claim thence to the South Seas, and, which was actually enforced, to the Mississippi; that of the millions of American citizens already within reach of those seas cannot consistently be rejected. It will not be denied that the extent of contiguous country to which an actual settlement gives a prior right must depend, in a considerable degree, on the magnitude and population of that settlement, and on the facility with which the vacant adjacent land may, within a short time, be occupied, settled, and cultivated by such population, compared with the probability of its being occupied and settled from any other quarter. This doctrine was admitted to its fullest extent by Great Britain, as appeared by all her charters, extending from the Atlantic to the Pacific, given to colonies established then only on the borders of the Atlantic. How much more natural and stronger the claim when made by a nation whose population extended to the central parts of the continent, and whose dominions were by all acknowledged to extend to the Rocky Mountains.' "

The counter arguments in support of the claim of Great Britain are put by him as follows:(1)—

"1. That the Columbia was not discovered by Gray, who had only entered its mouth, discovered four years previously by Lieutenant Meares, of the British navy; and that the exploration of the interior borders of the Columbia by Lewis and Clarke, could not be considered as confirming the claim of the United States, because if not before, at least in the same and subsequent years, the British North-West Company had, by means of their agents, already established their posts on the head waters or main branch of the river.

(1) Wheaton's "Elements," p. 230.

"2. That the restitution of Astoria, in 1818, was accompanied by express reservations of the claim of Great Britain to that territory, upon which the American settlement must be considered an encroachment.

"3. That the titles to the territory in question, derived by the United States from Spain through the treaty of 1819, amounted to nothing more than the rights secured to Spain equally with Great Britain by the Nootka Sound Convention of 1790; namely, to settle on any part of those countries, to navigate and fish in their waters, and to trade with the natives.

"4. That the charters granted by British sovereigns to colonies on the Atlantic coasts, were nothing more than cessions to the grantees of whatever rights the grantor might consider himself to possess, and could not be considered as binding the subjects of any other nation, or as part of the law of nations, until they had been confirmed by treaties."

In the year 1827 an attempt was made at a settlement of the question, Messrs. Huskisson and Addington being deputed to treat on behalf of Great Britain; and the claim of the power whose representatives they were, was supported by them in a lucid statement, of which Mr. Wheaton gives the following summary :(1)—

"Great Britain claims no exclusive sovereignty over any portion of the territory on the Pacific between the 42nd and the 49th parallels of latitude. Her present claim, not in respect to any part, but to the whole, is limited to a right of joint occupancy, in common with other states, leaving the right of exclusive dominion in *abeyance;* and her pretensions tend to the mere maintenance of her own rights, in resistance to the exclusive character of the pretensions of the United States.

(1) Wheaton's "Elements," p. 231.

"The rights of Great Britain are recorded and defined in the convention of 1790. They embrace the right to navigate the waters of those countries, to settle in and over any part of them, and to trade with the inhabitants and occupiers of the same. These rights have been peaceably exercised ever since the date of that convention; that is for a period of nearly forty years. Under that convention, valuable British interests have grown up in those countries. It is admitted that the United States possess the same rights, although they have been exercised by them only in a single instance, and have not, since the year 1813, been exercised at all; but beyond these rights they possess none.

"In the interior of the territory in question, the subjects of Great Britain have had, for many years, numerous settlements and trading posts; several of these posts are on the tributary waters of Columbia; several upon the Columbia itself; some to the northward, and others to the southward of that river; and they navigate the Columbia as the sole channel for the conveyance of their produce to the British stations nearest to the sea, and for its shipment thence to Great Britain; it is also by the Columbia and its tributary streams that these posts and settlements receive their annual supplies from Great Britain.

"To the interests and establishments which British industry and enterprise have created Great Britain owes protection; that protection will be given, both as regards settlement and freedom of trade and navigation, with every intention not to infringe the co-ordinate rights of the United States, it being the desire of the British Government, so long as the joint occupancy continues, to regulate its own obligations by the same rules which govern the obligations of every other occupying party."

No definite settlement of the controversy was arrived at in that year, but a convention was concluded between the two powers, which was in the terms following:—

"Art. 1. All the provisions of the third article (1) of the convention concluded between the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland, on the 20th of October, 1818, shall be, and they are, hereby further indefinitely extended and continued in force, in the same manner as if all the provisions of the said Article were herein specifically recited.

"Art. 2. It shall be competent, however, to either of the contracting parties, in case either should think fit at any time after the 20th October, 1828, on giving due notice of twelve months to the other contracting party, to annul and abrogate this convention; and it shall, in such case, be accordingly entirely anulled and abrogated after the expiration of the said term of notice.

"Art. 3. Nothing contained in this convention, or in the third article of the convention of the 20th of October, 1818, hereby continued in force, shall be construed to impair, or in any manner affect, the claims which either of the contracting parties may have to any part of the country westward of the Stony or Rocky Mountains."

From the foregoing discussions and treaties it is manifest, that Great Britain claimed an exclusive right to what is termed the Hudson's Bay Territory, north of the 49th parallel of north latitude, and claimed also a right of joint occupancy, in common with other states, in respect of the territory lying between the 49th and 42nd parallels. When, therefore, in the interests of peace, she surrendered her rights to the last-mentioned territory by the treaty about to be described, she must be taken to have surrendered so much only of those rights as is defined by that treaty. And if it is now contended, on the part of the United States, that Great Britain ought to have surrendered, and intended to

(1) *Ante*, p. 35.

surrender, certain other rights which she possesses (as, for instance, to the islands lying off the coast), the obvious answer is that, inasmuch as she did not specifically surrender those rights under the last-mentioned treaty, it is too late to argue as to what ought to have been, or what was intended to have been further provided thereunder.

To sum up this chapter, Great Britain formerly claimed a right of joint occupancy, in common with other states, in respect of the territory lying between the 42nd and 49th parallels, and the islands adjacent thereto: it remains to be seen how those rights were affected by the treaty about to be described.

CHAPTER V.

Subsequent to the passing of the last mentioned convention, new discussions were raised between the Governments of Great Britain and of the United States,(1) and as a result thereof a treaty was concluded between them on the 15th June, 1846.

The 1st article provided as follows:(2)—

"From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United States and those of Her Britannic Majesty shall be continued westward along the said forty-ninth parallel of north latitude, to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly, through the middle of the said channel, and of Fucas Straits, to the Pacific Ocean. Provided, however, that the navigation of the whole of the said channel and straits, south of the forty-ninth parallel of north latitude, remain free and open to both parties."

The second article provided for the free navigation of the Columbia River by the Hudson's Bay Company, and the British subjects trading with them, from the forty-ninth parallel of north latitude to the ocean.

The third article provided that the possessory

(1) The correspondence between the two Governments will be found in a Blue Book of the year 1846, entitled, "Correspondence relative, &c., to the Oregon Territory."

(2) American State Papers, p. 2.

rights of the Hudson's Bay Company, and all other British subjects, to the territory south of the said forty-ninth parallel, should be respected.

The circumstances, under which this treaty was made and signed, are explained in a memorandum subsequently drawn up by Sir Richard Pakenham, the negotiator thereof on the part of Great Britain, as follows :—

"I have examined the papers put into my hands by Mr. Hammond, relating to the line of boundary to be established between the British and United States possessions on the north-west coast of America, and I have endeavoured to call to mind any circumstance which might have occurred at the time when the Oregon treaty was concluded (15th June, 1846) of a nature either to strengthen or invalidate the pretension, now put forward by the United States Commissioner, to the effect that the boundary contemplated by the treaty would be a line passing down the middle of the channel, called Canal de Haro, and not, as suggested on the part of Great Britain, along the middle of the channel called Vancouver's or Rosario Strait, neither of which two lines could, as I conceive, exactly fulfil the conditions of the treaty which, according to their literal tenor, would require the line to be traced along the middle of the channel (meaning, I presume, the whole intervening space) which separates the continent from Vancouver's Island. And I think I can safely assert that the treaty of 15th June, 1846, was signed and ratified without any intimation to us whatever, on the part of the United States Government, as to the particular direction to be given to the line of boundary contemplated by Article 1 of that treaty.

"All we knew about it was that it was to run 'through the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel, and of Fuca Strait to the Pacific Ocean.'

"It is true that in a despatch from Mr. McLane, then United States Minister in London, to the Secretary of State, Mr. Buchanan, dated 18th May, 1846, which despatch, however, was not made public until after the ratification of the treaty by the Senate, Mr. McLane informs his Government that the line of boundary about to be proposed by Her Majesty's Government, would 'probably be substantially to divide the territory by the extension of the line on the parallel of forty-nine degrees to the sea, that is to say, to the arm of the sea called Birch's Bay, thence by the Canal de Haro and Straits of Fuca to the ocean.'

"It is also true that Mr. Senator Benton, one of the ablest and most zealous advocates for the ratification of the treaty (relying, no doubt, on the statement furnished by Mr. McLane), did, in a speech on the subject, describe the intended line of boundary to be one passing along the middle of the Haro channel.

"But, on the other hand, the Earl of Aberdeen, in his final instructions, dated 18th May, 1849, says nothing whatever about the Canal de Haro, but, on the contrary, desires that the line might be drawn 'in a southerly direction through the centre of King George's Sound and the Straits of Fuca to the Pacific Ocean.'

"*It is my belief that neither Lord Aberdeen nor Mr. McLane, nor Mr. Buchanan, possessed at that time a sufficiently accurate knowledge of the geography or hydrography of the region in question to enable them to define more accurately what was the intended line of boundary* than is expressed in the words of the treaty, and it is certain that *Mr. Buchanan signed the treaty with Mr. McLane's despatch before him, and yet that he made no mention whatever of the Canal de Haro* as that through which the line of boundary would run, as understood by the United States Government.

"My own despatch of that period contains no observation whatever of a tendency contrary to what I thus state from memory, and they, therefore, so far, plead in favour of the accuracy of my recollection."

This document shows that the contracting parties were quite unaware of the importance of the question, and were not accurately acquainted with the geography of the district with which they were dealing.

It appears that at the time this treaty was made (1) only one of the two straits above mentioned had been surveyed and used, viz., the Rosario Strait, and it would certainly seem to be the natural view to take of the intention of the negotiators of the treaty, that the word "channel" therein used had reference to that strait. Some time elapsed before any attempt was made to carry out the terms of the treaty, and to mark out the boundary line therein stipulated.

A survey of the so-called Gulf of Georgia was, however, set on foot by the British Government, but the same does not appear to have proceeded with very great rapidity.

At length, after some correspondence on the subject between the two Governments, Mr. Crampton, the then British Minister at Washington, was instructed to propose that Commissioners should be appointed for the purpose of carrying down such parts of the boundary line as should, on consultation, seem advisable to the two Governments. Accordingly, on the 13th January, 1848, he wrote to Mr. Buchanan a letter, from which the following is an extract :(2)—

"From the lake of the woods to the Gulf of Georgia

(1) American State Papers, p. 42 ; Letter of Crampton.
(2) American State Papers, pp. 40, 41.

the line is described by the treaty of 15th June, 1846, as running along the forty-ninth parallel of latitude, and the ascertainment of that parallel on the surface of the ground being an operation of astronomical observation, can be accomplished with as much precision at a future time as at present.

"But between the Gulf of Georgia and the Straits of Fuca, the line is less distinctly and accurately defined by the verbal description of the treaty by which it is established, and local circumstances render it probable that if this part of the line were not to be precisely determined, the uncertainty as to its course might give rise to disputes between British subjects and citizens of the United States. It appears, therefore, to Her Majesty's Government, that it would be wise to proceed forthwith to take measures for marking out that portion of the line of boundary.

"For this purpose, Her Majesty's Government are of opinion that it might probably be sufficient that each Government should appoint a naval officer of scientific attainments, and of conciliatory character, and that those officers should be directed to meet at a specified time and place, and should proceed in concert to lay down the above-mentioned portion of the boundary line.

"The first operation of these officers would be to determine with accuracy the point at which the forty-ninth parallel of latitude strikes the eastern shore of the Gulf of Georgia, and to mark that point by a substantial monument.

"From that point, they would have to carry on the line along the forty-ninth parallel of latitude, to the centre of the channel between Vancouver's Island and the continent; and this point, as it probably cannot be marked out by any object to be permanently fixed on the spot, should be ascertained by the intersection of the cross-bearings of natural or artificial landmarks.

"The two officers would then have to carry on the line down the centre of that channel, and down the centre of the Straits of Fuca to the ocean. And this water-line must, as it

would seem, be determined also by a series of points, to be ascertained by the intersection of cross-bearings.

"But in regard to this portion of the boundary line, a preliminary question arises, which turns upon the interpretation of the treaty, rather than upon the result of local observation and survey.

"The convention of the 15th June, 1846, declares that the line shall be drawn through the middle of the *channel* which separates the continent from Vancouver's Island; and upon this may be asked what the word 'channel' was intended to mean?

"Generally speaking, the word 'channel,' when employed in treaties, means a deep and navigable channel. In the present case it is believed that only one channel—that, namely, which was laid down by Vancouver in his chart—has, in this part of the gulf, been hitherto surveyed and used; and it seems natural to suppose that the negociators of the Oregon convention, in employing the word 'channel,' had that particular channel in view.

"If this construction be mutually adopted, no preliminary difficulty will exist, and the Commissioners will only have to ascertain the course of the line along the middle of that channel, and along the middle of the Straits of Fuca, down to the sea.

"It is, indeed, on all accounts, to be wished that this arrangement should be agreed upon by the two Governments, because, otherwise, much time might be wasted in surveying the various intricate channels, formed by the numerous islets which lie between Vancouver's Island and the mainland, and some difficulty might arise in deciding which of those channels ought to be adopted for the dividing boundary.

"The main channel marked in Vancouver's chart is, indeed, somewhat nearer to the continent than to Vancouver's Island, and its adoption would leave on the British side of the line rather more of those small islets with which that part of the gulf is studded than would remain on the American side. But these islets are of little or no value, and the only large

and valuable island belonging to the group—namely, that called Whidbey's—would, of course, belong to the United States.

"This question being, as I have already said, one of interpretation rather than of local observation, it ought, in the opinion of Her Majesty's Government, to be determined before the Commissioners go out, which cannot be earlier than spring next year."

A draught copy of the instructions proposed by Great Britain to be given to the Commissioners, if appointed, was enclosed in the above letter, and it appears to have been in the following words:(1)—

"Her Majesty's Government and the Government of the United States, having determined to appoint Commissioners for the purpose of marking out that part of the line of boundary between the British and United States possessions in North America, which passes through the Gulf of Georgia and Fuca Straits to the Pacific Ocean, I have to acquaint you, &c., &c.

"The first article of the treaty of the 15th of June, 1846, between Great Britain and the United States, provides as follows:—

"From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between Great Britain and the United States terminates, the line of boundary between the territories of Her Britannic Majesty and those of the United States shall be continued westward along the said forty-ninth parallel of north latitude, to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly, through the middle of the said channel, and of Fuca Straits, to the Pacific Ocean: Provided, however, that the navigation of the whole of the said channel and strait, south of the forty-ninth parallel of north latitude, remain free and open to both parties.

(1) American State Papers, p. 42.

"The first operation, which, in conjunction with the United States Commissioners, you will have to undertake, in tracing the above mentioned boundary line, will be to determine with accuracy the point at which the forty-ninth parallel of north latitude strikes the eastern shore of the Gulf of Georgia, and to mark that point by a substantial monument.

"From that point you will carry on the line of boundary, along the forty-ninth parallel of north latitude to the middle of the channel between Vancouver's Island and the continent; the whole breadth of the Gulf of Georgia in this part being, as far as is known, navigable. The term 'middle of the channel,' used in the treaty, may here be assumed to mean the middle of the gulf; but it is probable that the point which constitutes the middle of the gulf cannot well be marked out by any object to be fixed permanently on the spot, it must be ascertained and fixed by the intersection of the cross-bearings of natural or artificial landmarks. This matter the Commissioners will have to settle by mutual agreement; but it will be essential that the point in question should be marked out as accurately as the nature of things will admit.

"You will then proceed to carry on the line of boundary, from this point down the middle of the Straits of Fuca to the ocean. In tracing and marking out this continuation of the boundary, the water-line must, probably, still be determined by a series of points, to be ascertained by the intersection of cross-bearings.

"In performing this operation it will, of course, be desirable to observe as much accuracy as may be attainable; but, independently of the impossibility of arriving at mathematical precision in such matters, such precision is the less important, because the treaty stipulates that the navigation of the whole of the channel of the Gulf of Georgia, and of the Straits of Fuca, shall remain free and open to both parties.

"That part of the channel of the Gulf of Georgia which lies nearly midway between the forty-eighth and forty-ninth parallels of north latitude appearing, by Vancouver's chart, to

be obstructed by numerous islands, which seem to be separated from each other by small and intricate channels, as yet unexplored, it has, therefore, been mutually determined between the Governments of Great Britain and the United States, in order to avoid the difficulties which would probably attend the explorations of all those channels, that the line of boundary shall be drawn along the middle of the wide channel to the east of those islands, which is laid down by Vancouver and marked with soundings as the channel which had been explored and used by the officers under his command. You will find the line thus described traced in red in the copy from Vancouver's chart hereto annexed. It must necessarily be left to the discretion of the Commissioners to connect this part of the line, which, being drawn through portions of the gulf free from islands, must pass exactly half way between Vancouver's Island and the main; but the slight deviations of the boundary from the accurate midway which may for some short distance be required for this purpose, cannot be of any material importance to either party."

The British Government had thus done all in their power to approach a final settlement of the question, but it remained in abeyance until the year 1856, inasmuch as the legislature of the United States refrained from appropriating the sums necessary to meet the expenses of conducting the operation of marking out the boundary.[1]

[1] American State Papers, p. 105.

CHAPTER VI.

Meanwhile, on the 2nd of February, 1847, the Senate of the United States passed a resolution in due form, directing Colonel (afterwards General) J. C. Fremont, of the United States army, who was then engaged, officially, upon a topographical survey of Oregon and Upper California, to construct a map of those regions, and Mr. Charles Preuss, who had also been engaged in such survey, was directed to assist in the construction of this map.[1]

General Fremont and Mr. Preuss gave their most assiduous attention to the work, which was not concluded until June, 1848, when it was presented to the Senate, together with a geographical memoir descriptive thereof, drawn up by General Fremont himself. The full title of the map was as follows:—

Map of
Oregon and Upper California,
from the Surveys of
John Charles Fremont,
and other authorities.
Drawn by Charles Preuss,
under the order of the
Senate of the United States,
Washington City, 1848.

The extent and character of this map was described by General Fremont in the "Geographical

[1] Geographical Memoir upon Upper California. By John Charles Fremont. Washington, 1848. P. 1.

Memoir," and, inasmuch as his description contains highly important evidence in favour of the claims of Great Britain to the Haro Archipelago, I shall give his own language:(1)—

"In laying the map of Oregon and Upper California before the Senate, I deem it proper to show the extent and general character of the work, and how far it may be depended on as correct, as being founded on my own or other surveys, and how far it is conjectural, and only presented as the best that is known.

"In extent it embraces the whole western side of this continent, between the eastern base of the Rocky Mountains and the Pacific Ocean, and between the Straits of Fuca and the Gulf of California, *taking for its outline, on the north, the boundary line with Great Britain*, and on the south, including the bay of San Diego, the head of the Gulf of California, the rivers Colorado and Gila, and all the country through which the line of the late treaty with Mexico would run from El Paso del Norte to the sea. To complete the view in that quarter, the valley of the Rio del Norte is added, from the head of the river to El Paso del Norte, thereby including New Mexico. The map has been constructed expressly to exhibit the two countries of Oregon(2) and the alta California together. It is believed to be the most correct that has appeared of either of them; and it is certainly the only one that shows the structure and configuration of the interior of Upper California."

The position in which he placed the boundary line between the possessions of Great Britain and the United States is nowhere described by him as "conjectural, and only presented as the best that is known," and it must, therefore, be taken to be correct according to

(1) "Geographical Memoir," p. 1.

(2) At the period of this survey that which is now called Washington Territory formed a part of the Oregon Territory.

the judgment of General Fremont and Mr. Charles Preuss, no mean authorities.

The boundary line in this official map, published by the direction and under the authority of the Senate of the United States, starts from the middle of the Gulf of Georgia, on the forty-ninth parallel of north latitude, and runs thence southerly through the middle of the Rosario "Channel," and through the middle of Fuca Straits to the Pacific Ocean, thus, as I venture to submit, fulfilling to the letter the words of the treaty of 1846.

On the 5th of June, 1848,[1] it was resolved by the United States Senate, "that the Secretary of the Senate be authorised to contract for lithographing and printing 20,000 copies of J. C. Fremont's map of Oregon and California, reduced from the original according to the projection to be furnished by the said J. C. Fremont." It was also resolved that the same number of copies of the "Geographical Memoir" should be printed. On the 15th of June it was further resolved, that 100 copies of the map, and the same number of the memoir should be printed for the use of the Topographical Bureau. (A fac-simile of a portion of this map, showing the position of the boundary line according to the judgments of General Fremont and Mr. Preuss, is presented to the public with this volume.)

On the 21st of October, 1852, a second United States Government map was published, the full title of which is as follows:[2]—

[1] "Geographical Memoir." [2] American State Papers, p. 36.

"A diagram of a portion of Oregon Territory. Surveyor-General's Office, Oregon City, October 21st, 1852. John B. Preston, Surveyor-General. Scale, ten miles to an inch."

This map shows upon it the southern portion of the Gulf of Georgia, Vancouver's Strait, and the Straits of Fuca; the line of boundary, as in the former map, runs down the Rosario Strait, and thence through the Straits of Fuca into the Pacific.

In the year 1853 that conscientious and accurate geographer, John Arrowsmith, drew up a map of Vancouver's Island and the adjacent coasts, from the surveys of Vancouver, Kellet, Simpson, Galliano, Valdez, &c., and from the above-mentioned map of General Fremont, and the boundary line was described by him in accordance with the views which he believed to be held by the Government of the United States, and in accordance with the above-mentioned map of General Fremont.

Again, I take up an atlas published in Scotland in the year 1862, by those eminent geographers the Messrs. Black, and in a map of the Western States of America I find this region depicted with the boundary line distinctly traced as running through the Rosario Straits.

It appears, however, that, in spite of the admissions made in their official maps and surveys by the United States legislature, that a line drawn down the middle of the Rosario Strait was the boundary intended by the treaty of 1846, the legislature of the Territory of Oregon, the adjoining coast being within their jurisdiction, passed an Act by which they affected to

include the Haro Archipelago as a portion of one of the counties of the Territory.(1)

I am not aware whether this local Act ever received the sanction of Congress. Subsequently, in the year 1853, the Territory of Washington was created out of part of Oregon, and the coast opposite to the Haro Archipelago became a portion of that Territory; and by an Act of its legislature, dated 1854, the Archipelago was alleged and declared to form a part of one of its counties, named Whatcom County. This Act has, I believe, never received the sanction of Congress.

The relations between the Government of the United States and the particular districts called Territories are not easily to be defined or described, and I do not think they are clearly known to the United States jurists themselves. Territories are states in embryo, not having a population sufficiently numerous or powerful to admit of their being received into the great federation on terms of equality with the other societies which are dignified by the name of states. It appears that the Congress of the United States assumes to exercise supreme control over them, and the acts of a Territorial legislature are subject to the control of the Senate, which may annul the same, and if not annulled, it seems to follow that such acts become a part of the general law of the United States. The Territories send to the general Congress delegates, who take part in the discussions of the House of Representatives, but do not enjoy the right of voting.

(1) American State Papers, p. 3.

The little weight to be attached to the assumption of title to the Haro Archipelago by the legislature of Washington Territory, may be judged by the fact, that in the year 1860, six years subsequent to the passing of the Act, that legislature represented a population of 11,594 persons, men, women, and children (many of them half-castes), spread over an area of 113,000 square miles.(1) And when we read of governors, collectors, receivers, judges, and even chief justices, land agents, and United States marshals of Washington Territory, does not the picture rise before us of that Eden in the wilderness, described with so much humour and pathos by Mr. Dickens in "Martin Chuzzlewit." On the 14th of July, 1855, Mr. Marcy, Secretary of State, wrote, by the direction of the President, a letter to Mr. Stevens, the governor of Washington Territory, from which the following is an extract:(2)—

"He (the President) has instructed me to say to you, that the officers of the territory should abstain from all acts on the disputed grounds which are calculated to provoke any conflicts, so far as it can be done without implying the concession to the authority of Great Britain of an exclusive right over the premises.

"The title ought to be settled before either party should exclude the other, by force, or exercise complete and exclusive sovereign right, within the fairly disputed limits.

"Application will be made to the British Government to interpose with the local authorities on the northern borders of our territory, to abstain from like acts of exclusive ownership, with the explicit understanding that any forbearance on either

(1) Les États Unis d'Amerique en 1863. Par John Bigelow, Consul des États Unis à Paris. 1863. Pp. 543, 545.

(2) American State Papers, p. 144.

side to assert the rights respectively, shall not be construed into any concession to the adverse party.

"By a conciliatory and moderate course on both sides, it is sincerely hoped that all difficulties will be avoided until an adjustment of the boundary line can be made in a manner mutually satisfactory. The Government of the United States will do what they can to have the line established at an early period."

A copy of this extract was forwarded by Mr. Marcy to Mr. Crampton in a letter of the 17th of July, which was as follows:(1)—

"Sir,—I am under some apprehension that collisions may take place between our citizens and British subjects in regard to the occupation of the disputed point above the line, between Washington Territory and the British possessions on the north of it.

"In the hope of avoiding such a difficulty, I have, by the direction of the President, addressed a letter to the Governor of that Territory on the subject, and herewith furnish you with an extract from it. I presume that the Government of Her Britannic Majesty will be willing to recommend to her subjects along the boundary in question a similar course, until the line can be established. In that way I sincerely hope all collision may be avoided.

"I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration."

On the 18th of July Mr. Crampton replied, concurring in the propriety of the course recommended to Governor Stevens, and expressing his intention to advise that a reciprocal policy should be adopted by the Governor of Vancouver's Island.(2)

Thus it was agreed between the Government of the United States and that of Great Britain, that the

(1) American State Papers, p. 145. (2) American State Papers, p. 230.

question as to the possession of the Haro Archipelago should remain in abeyance, and that no acts of either side, or forbearance from the exercise of jurisdiction, should prejudice the question of the title.

It appears that notwithstanding the definite agreement thus arrived at, the property of the Hudson's Bay Company on the Island of San Juan was in the year 1855 assessed by the civil authorities of Washington Territory; the Company very properly declined to pay taxes attempted to be levied by a foreign power, and their property was, in consequence, advertised and sold by the authorities.[1] A correspondence ensued between the Governors respectively of Vancouver's Island and Washington Territory, in the course of which the former stated that he was instructed by the British Government to regard the Haro Archipelago as an integral part of the British dominions. A claim for damages in respect of the above-mentioned seizure of property was made by Mr. Crampton, the British Minister at Washington, against the Government of the United States, and at the same time he renewed his proposal for the appointment of a joint commission for the purpose of marking out the boundary line. While thus renewing his former proposal, he suggested that if the Government of the United States could not, without difficulty, accede to the same, it should join Great Britain in adopting the channel marked by Vancouver as the only navigable channel known, to be the channel intended by the treaty.

[1] American State Papers, pp. 3, 78.

CHAPTER VII.

On the 11th of August, 1856,[1] an Act was at length passed by Congress, authorising the appointment of a commissioner by the United States Executive, to work jointly with a commissioner appointed by Great Britain; the joint instructions proposed by Mr. Crampton on the former occasion were not, however, accepted, each Government being left at liberty to issue its own instructions to its own officers. By Section 4 of that Act it was provided that, "until otherwise provided for by law, the proceedings of the said commission shall be limited to the demarcation of that part of the said line of boundary which forms the boundary line between Washington Territory and the British possessions."

Two commissioners were then appointed by the British Government, Captain Prevost and Captain Richards, of the Royal Navy. As a dispute subsequently arose as to the authority with which those commissioners were invested, it will be convenient to insert here the commission by which they were appointed, and the instructions issued to them.

The commission was as follows:[2]—

"Whereas, by the first Article of the Treaty concluded and signed at Washington on the 15th day of June, 1846,

[1] American State Papers, p. 3. [2] American State Papers, p. 99.

between us and our good friends the United States of America, it was stipulated and agreed that from the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between Great Britain and the United States terminates, the line of boundary between our territories and those of the United States shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent of Vancouver's Island, and thence southerly through the middle of the said channel of the Fuca Straits to the Pacific Ocean: Provided, however, that the navigation of the whole of the said channel and straits south of the forty-ninth parallel of north latitude remain free and open to both parties. And whereas the line of boundary described in the said Article has never yet been ascertained and marked out, and it appears to us and to our said good friends the United States of America expedient to appoint commissioners for that purpose: Now know ye, that we, reposing especial trust and confidence in the diligence, skill, and integrity of our trusty and well-beloved James Charles Prevost, Esquire, a captain in our royal navy, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint him our First Commissioner, for the purpose of surveying, ascertaining, and marking out, in conjunction with the commissioner or commissioners appointed, or to be appointed, by the President of the United States in that behalf, so much as the line of boundary hereinbefore described as it is to be traced from the point where the forty-ninth parallel of north latitude strikes the eastern shore of the Gulf of Georgia. And we do hereby give to our said commissioner full power and authority to do and perform all acts, matters, and things which may be necessary and proper for duly carrying into effect the object of this our commission.

"And we, reposing especial trust and confidence in the diligence, skill, and integrity of our trusty and well-beloved George Henry Richards, Esquire, a captain in our royal navy,.

have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint him our second commissioner for the purpose of this our commission, and we do hereby give unto him full power and authority to be present with and to assist our first commissioner in the due execution thereof, and also in the case of the death, absence, or incapacity of our said first commissioner, to supply his place and to act singly as our commissioner for the due execution of this our commission.

"In witness whereof we have signed these presents with our royal hand, given at our Court, at Osborne House, the 18th day of December, in the year of our Lord One thousand eight hundred and fifty-six, and in the twentieth year of our reign.

"By Her Majesty's command.

"CLARENDON."

The original instructions issued to Captain Prevost were contained in two letters addressed to him by Lord Clarendon, dated 20th December, 1856. The first letter was as follows :(1)—

"Foreign Office, December 20th, 1856.

"SIR,—I enclose you herewith a commission, under Her Majesty's sign manual, appointing you to be Her Majesty's first commissioner for ascertaining and marking out so much of the boundary, under the first article of the treaty between Great Britain and the United States, of which a copy is enclosed, as is traced from the point where the forty-ninth parallel north latitude strikes the eastern shore of the Gulf of Georgia, and also appointing Captain Richards to be Her Majesty's second commissioner, and authorising him to be present with, to aid and assist you in the execution of your duties as first commissioner; and, in case of your being incapacitated by any cause from the performance of your duties, to supply your place as first commissioner.

(1) American State Papers, p. 100.

"Under the authority of this appointment, Captain Richards may, if you consider it desirable, be present at, and take part in, the discussions between yourself and the commissioner or commissioners appointed by the United States, but the responsibility for the conduct of the commission, and the control of its proceedings, as far as the British portion of it is concerned, rests exclusively with yourself. Captain Richards is placed under your orders, and you will assign to him a portion of the duties devolving upon the commission as you may consider expedient.

"I have appointed Mr. George Young to be secretary to the commission, and he will also be under your orders. In a subsequent despatch I furnish you with detailed instructions for your guidance; and I have only, therefore, to state to you, in my present despatch, that the boundary line which may be agreed upon must be accurately laid down on a map drawn in duplicate, and each copy of such map must be signed by the commissioners of both parties, and annexed to the protocol, also signed in duplicate, in which the agreement come to shall be recorded. The Board of Admiralty have been requested to supply you with such scientific instruments as you may require for the use of the commission, and with any maps or charts which may be likely to be useful to you. You will report to me from time to time, and in duplicate, your proceedings in execution of the instructions which I have addressed to you.

"CLARENDON.

"Captain Prevost, R.N., &c., &c."

Additional instructions were at the same time issued to Captain Prevost, which, so far as they related to the character of his duties, and to the extent of his powers, were as follows :(1)—

"The Queen, having been pleased to appoint you to be Her Majesty's First Commissioner for marking out so much

(1) American State Papers, p. 104.

of the boundary between Her Majesty's possessions in North America, and the territories of the United States, as is comprised between the continent of America and Vancouver's Island, I have to furnish you with the following instructions for your guidance in the execution of the duties intrusted to you by Her Majesty. The boundary which, in conjunction with one or more commissioners appointed by the Government of the United States, it will be your duty accurately to define, is described in the treaty between Great Britain and the United States, of June 15th, 1846, in the following general terms :—

"'From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between Great Britain and the United States terminates, the line of boundary between the territories of Her Britannic Majesty and those of the United States shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly, through the middle of the said channel and of Fucas Strait to the Pacific Ocean: Provided, however, that the navigation of the whole of the said channel and straits south of the forty-ninth parallel of north latitude remain free and open to both parties.'

"It is to be regretted that no map or plan was annexed to the treaty on which the line of boundary thus indicated was laid down, as in the intermediate space between the continent and Vancouver's Island, there are several smaller islands, through and among which different channels run, in various directions, along one or more of which a passage to the southward, from the Gulf of Georgia to the Strait of Juan di Fuca, may be found.

"At the time, however, when the treaty was concluded, in 1846, only one navigable channel was known to exist, viz., that known by the name of Rosario Strait (sometimes called Vancouver's Channel), which runs due south from the lower extremity of the Gulf of Georgia to the eastern extremity

of the Straits of Fuca. A line drawn through the centre of the Gulf of Georgia, and along the centre of the channel, would, therefore, exactly answer the description of the channel contained in the treaty. On this ground, Her Majesty's Government, shortly after the conclusion of the treaty of 1846, proposed to the Government of the United States, that the channel known as Rosario Strait should be adopted, by mutual agreement, as the channel of the treaty; but the Government of the United States showed no disposition to accede to this proposition; and, on the contrary, in the year 1848, through their Minister at this Court, Mr. Bancroft, they spoke of another channel more immediately adjacent to Vancouver's Island, namely, the Channel of Arro, as that through which the boundary line passed. Since that time the question of defining the boundary has remained in abeyance, because the legislature of the United States has refrained from appropriating the sums necessary to meet the expenses incidental to the operation. This obstacle has now been removed, but Her Majesty's Government have not thought it advisable, after what has passed on the subject, to renew the proposal, that, as a preliminary to the meeting of their respective Commissioners, the two Governments should come to an understanding between themselves, as to what was the channel of the treaty. That channel is, therefore, now to be ascertained. It is to be sought for between Vancouver's Island and the mainland, in an archipelago of islands, hitherto unsurveyed by any British authority; though it would seem, from a chart published in the United States, in the year 1854, called 'A Reconnaissance of Canal de Arro and Strait of Rosario,' that a survey has been made of it, on the part of the United States Government.

"It will be the duty of Her Majesty's commissioner to ascertain, with the assistance of the officers placed under his orders, and in communication and conjunction with the commissioners of the United States, what is the channel through the middle of which, and of Fuca Straits, according to the terms of the treaty, the line is to run from the forty-ninth degree.

of north latitude to the Pacific Ocean. The first operation will, of course, be to determine with accuracy the point at which the forty-ninth parallel of north latitude strikes the eastern shore of the Gulf of Georgia, and to mark that point by a substantial monument. That point ascertained, the commissioners will carry on the line of boundary, as prescribed in the treaty, along the forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island.

"The point next to be ascertained is the middle of the channel which separates the continent from Vancouver's Island, from which the boundary line is to be drawn in a southerly direction, through the middle of the said channel.

"That point will probably be found somewhere about 123° 15′ west longitude. At whatever place this point may be fixed, the line is to be drawn from thence through the middle of the channel separating the continent from Vancouver's Island in a southerly direction.

"In this part of the space between them there is only one channel—namely, the Gulf of Georgia, and it would seem, therefore, to be clear, that the line must be drawn along the centre of that gulf to its southern extremity, where it ceases to be the only channel between the continent and Vancouver's Island.

"At the other extreme point of the boundary between the territories of Great Britain and the United States—namely, the Straits of Juan de Fuca—there is only one channel, and along the centre of that channel the boundary line is to be drawn.

"Any question, indeed, as to which channel is to be adopted as the true line of boundary indicated by the treaty, can only arise when there is more than one channel which might be supposed to answer the description of the treaty.

"So long as there is only one channel separating the continent and Vancouver's Island, no doubt can be entertained, and, therefore, the centre of the Gulf of Georgia, so far as the latitude where it ceases to be the only channel, and the

centre of the Strait of Fuca, till it ceases, also, to be the only channel between the continent and Vancouver's Island, appear to Her Majesty's Government to be fixed points in the line of boundary, and it is only as regards the space between the two points that any differences of opinion as to the proper channel can exist.

"A line drawn down the middle of the Gulf of Georgia would pass just to the eastward of the Matia Group, at the head of Rosario Strait, and being prolonged from thence nearly due south, would pass through Rosario Strait into the Strait of Juan de Fuca. It appears to Her Majesty's Government that the line which I have described is so clearly and exactly in accordance with the terms of the treaty that it may be hoped you will have no difficulty in inducing the American commissioner to acquiesce in it. If, however, the commissioner of the United States will not adopt the line along the Rosario Strait, *and if, on a detailed and accurate survey, and on weighing the evidence on both sides of the question, you should be of opinion that the claims of Her Majesty's Government to consider Rosario Strait as the channel indicated by the words of the treaty cannot be substantiated, you would be at liberty to adopt any other intermediate channel you may discover on which the United States Commissioner and yourself may agree, as substantially in accordance with the description of the treaty.*

"But if you are satisfied that the British claim is unquestionably sound, and you are unable to come to an understanding on the subject of an intermediate channel with your American colleague, you will then propose *that you should lay before your respective Governments, either jointly or severally, a statement of the points on which you disagree*, and the reasons by which each of you supports his opinion. Having disposed of the difficulties in regard to the boundary line from the Gulf of Georgia to the Straits of Juan de Fuca, it is not supposed likely that you will have any further difficulty in carrying on the line through the strait to the Pacific Ocean. From the character of the whole line being that of a water boundary, it will be more difficult than in the case of a land boundary to

mark exactly the territorial limits of the respective Governments. You will do so, as far as circumstances admit, by the intersection of the cross-bearings of natural or artificial landmarks, endeavouring, as far as possible, to make the line so clear and easy to be understood as to obviate any future difference on the subject between the two Governments."

The executive of the United States appointed Mr. Archibald Campbell as sole commissioner, and his commission was couched in the following terms :(1)—

"Franklin Pierce, President of the United States of America, to all who shall see these presents, greeting :— Know ye, that reposing special trust and confidence in the integrity and ability of Archibald Campbell, I have nominated, and, by and with the advice and consent of the Senate, do appoint him to be commissioner of the United States, under the Act of Congress, August 11th, 1856, and do authorise and empower him to execute and fulfil the duties of that office, according to law, and to have and to hold the said office, with all powers, privileges, and emoluments thereunto of right appertaining unto him, the said Archibald Campbell, commissioner, to carry into effect the first article of the treaty between the United States and Her Britannic Majesty of the 15th June, 1846.

"In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

"Given under my hand at the City of Washington, the 14th day of February, in the year of our Lord 1857, and of the Independence of the United States of America the eighty-first.

"Franklin Pierce.

"By the President.

"W. L. Marcy, Secretary of State."

The written instructions issued to Mr. Campbell,

(1) American State Papers, p. 95.

so far as they related to the determination of the boundary line, were as follows:(1)—

"Department of State, Washington, Feb. 25, 1857.

"SIR,—The President of the United States, by and with the advice and consent of the Senate, has appointed you the commissioner on the part of the United States to determine and mark the boundary line between the United States and the British possessions, as described in the first article of the treaty between the United States and Her Majesty the Queen of Great Britain and Ireland, of the 15th June, 1846.

"Enclosed is your commission, and a printed copy of the above-mentioned treaty, as published by this department. The first article of the treaty describes the boundary line in the words following, viz.:—'From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United States and those of Her Britannic Majesty shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel of the Fuca Straits to the Pacific Ocean.' Section 4 of the Act passed by Congress August 11th, 1856, for carrying the foregoing article of the treaty into effect, directs 'that, until otherwise provided for by law, the proceedings of the said commission shall be limited to the demarcation of that part of the said line of boundary which forms the boundary line between Washington territory and the British possessions.'

"The same Act provides for a chief astronomer and surveyor, and an assistant astronomer and surveyor, a secretary to be appointed by the commissioner, and a clerk to be appointed by the chief astronomer. The employment of such other persons as may be necessary is left to your discretion.

(1) American State Papers, p 96.

"Lieutenant John G. Parke, of the Topographical Engineers, has been appointed chief astronomer and surveyor, and has been directed to report to you. It is not contemplated, in the appointment of a chief astronomer and surveyor, at all to divide the responsibility which these instructions devolve upon the commissioner. It is not presumed that any difference of opinion will arise, but should that be the case, your views are to govern until a decision can be obtained from this department.

"Mr. George Clinton Gardner has been appointed assistant astronomer and surveyor, and has been directed to report to you.

"You will with as little delay as possible organise the commission, and prepare a suitable outfit to enable you to perform the duties entrusted to you. The above Act referred to authorises the President, for the purpose of aiding in the demarcation of the boundary line, 'to direct the employment of such officers, assistants, and vessels, attached to the coast survey of the United States as he may deem necessary or useful;' and the President has, accordingly, requested the Secretary of the Treasury to give such instructions to the Superintendent of the Coast Survey as will secure his co-operation in the arrangement necessary for the hydrographical portion of the work. Having completed the organisation and outfit, and made other preparations indicated, you will repair to Fuca Straits, *viâ* San Francisco, to meet the commissioner on the part of the British Government, and proceed with him to determine such portion of the line described in the first article of the treaty as is provided for by the Act above cited.

"You are required to keep a journal showing your operations, and will, from time to time, keep this department advised of your progress; and after your arrival on the Pacific coast, and the completion of your organisation, you will transmit a statement of all persons employed by you, the nature of their occupation, and their compensation.

"Upon the completion of your field work you will return

to Washington City, and prepare the maps and plans exhibiting your operations, and report of the result of your labours.

"I am, Sir, respectfully,

"Your obedient servant,

"W. L. MARCY.

"Archibald Campbell, Esq.,
"Washington City, D.C."

CHAPTER VIII.

Captain Prevost, the British commissioner,[1] left England in H.M.S. *Satellite*, steamer, at the close of December, 1856, leaving Captain Richards, his assistant-commissioner, and the chief astronomer and surveyor of the British Commission, to follow him in H.M.S. *Plumper*, steamer, it being intended that the last-mentioned officer should survey and draw up a chart of the channels and islands between the continent and Vancouver's Island.

Captain Prevost arrived in the Harbour of Esquimault, Vancouver's Island, on the 12th June, 1857, but Captain Richards, in consequence of an accident to the machinery of H.M.S. *Plumper*, did not arrive until near the end of the year.[2] Mr. Campbell, the United States commissioner,[3] having the United States surveying steamer *Active*, Captain Alden commander, and the United States brig *Fauntleroy*, placed under his orders, for the purpose of making such hydrographical surveys as might be required, left New York on the 20th April, and arrived at Victoria, Vancouver's Island, on the 22nd June, 1857.

The joint commission held its first meeting on the 27th June, 1857,[4] on board H.M.S. *Satellite*, in

(1) American State Papers, p. 8. (2) Idem, p. 9. (3) Idem, p. 8.
(4) Idem, p. 48.

the Harbour of Esquimault, when the commissioners exhibited their respective commissions, which were read, and, according to a minute made by Mr. Campbell, were found to be in due form. The commissioners then discussed their future plans, and agreed to proceed to Point Roberts, towards the north of the Gulf of Georgia, in the neighbourhood of which, it was stated, the initial points of the boundary line might be expected to be found.

On the 17th July, 1857, a second meeting of the joint commission was held on board H.M.S. *Satellite*, in the Harbour of Nanaimo, on the south-east of Vancouver's Island, when an adjournment was found necessary in consequence of the non-arrival of H.M.S. *Plumper*. The third meeting took place on the 26th October, 1857, on board H.M.S. *Satellite*, in Simiahmoo Bay, on the coast of British Columbia, near Point Roberts, when the British commissioner, Captain Prevost, stated that as he had verified the general accuracy of the United States Coast Survey Chart, dated 1854, he was willing to take that chart as the chart upon which the general character of the boundary line should be determined, leaving the correct tracing of that line to be subsequently carried out by the surveying officers.

The first article of the treaty of 1846 was then read and discussed,[1] Captain Prevost arguing that Rosario Strait was the only channel which would the answer the language of the treaty, and Mr. Campbell stating that in his opinion the boundary line should

[1] American State Papers, pp. 48, 49.

pass through the Canal de Haro. The fourth meeting of the joint commission was held on the 27th October, 1857, on board H.M.S. *Satellite*, in Simiahmoo Bay, when another discussion took place, Captain Prevost pointing out that the Rosario Strait was the channel preferred by vessels sailing through the waters between Vancouver's Island and the mainland.

On the following day Captain Prevost proceeded to put the substance of his views on the boundary question into writing, in a letter addressed to Mr. Campbell, which was as follows:(1)—

"Her Britannic Majesty's ship *Satellite*,
"Simiahmoo Bay, Gulf of Georgia, Oct. 28, 1857.

"Sir,—With reference to the various consultations we have had as to the direction in which the boundary line should run through the channel separating the continent from Vancouver's Island, at and to the southward of the forty-ninth parallel of north latitude into the Straits of Juan de Fuca, and from thence to the Pacific Ocean, I have the honour to communicate to you in writing the views I entertain on the subject.

"2. As the water boundary line to be determined is described in the first article of the treaty between Great Britain and the United States of 15th June, 1846, it, in my opinion, clearly follows that the direction in which the said line is to be traced should alone be sought in the words of that treaty. I will here quote them so far as they relate to the particular line of water boundary:—

"'The line of boundary between the territories of Her Britannic Majesty and those of the United States shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel and of Fuca Straits

(1) American State Papers, p. 10.

to the Pacific Ocean; provided, however, that the navigation of the whole of the said channel and straits south of the forty-ninth parallel of north latitude remain free and open to both parties.'

"3. Now upon reference to the chart it will be found, what indeed is the fact, that at the forty-ninth parallel of north latitude there is only one navigable channel lying between the continent and Vancouver's Island. This channel is commonly called the Gulf of Georgia, and in its open waters will be found the initial point of boundary line. From this point there can be but little difficulty in carrying the boundary line, according to the words of the treaty, southerly through the middle of the said channel to about 48° 45′ of north latitude. Here the waters are studded with islands, through which, it is generally admitted, two navigable passages are to be found. One is now commonly designated the Rosario Strait, and is situated near the continent; the other is called the Canal de Arro, and is found nearer to Vancouver's Island. Through which of these two channels the boundary line should pass may at first sight appear a matter of doubt, but the precise wording of the treaty, I think, sufficiently determines it. The line is to be carried through the middle of a navigable channel separating the continent from Vancouver's Island, and the only navigable channel separating the continent from Vancouver's Island at this position is the channel generally called the Rosario Strait. Therefore, my entire conviction is that the boundary line should be carried through those waters known as the Gulf of Georgia into the Rosario Strait, to the Straits of Fuca, and thence to the Pacific Ocean.

"4. By a careful consideration of the wording of the treaty it would seem distinctly to provide that the channel mentioned should possess three characteristics:—1st. It should separate the *continent* from Vancouver's Island. 2nd. It should admit of the boundary line being carried through the middle of it in a southerly direction. 3rd. It should be a navigable channel. To these three peculiar conditions the channel known as the Rosario Strait most entirely answers.

"5. It is readily admitted that the Canal de Arro is also a navigable channel, and therefore answers to one characteristic of the channel of the treaty; although I may as well here mention, that from the rapidity and variableness of its currents, and from its being destitute of anchorages, except at extreme ends, it is unsuitable for sailing vessels, and would scarcely ever be used by them so long as the passage through the Rosario Strait remained available, as the currents in that Strait being generally regular, and the anchorages convenient and secure, it is by far the more navigable channel of the two. But the Canal de Arro will not meet the two remaining characteristics of the channel of the treaty. It literally and geographically does not separate the continent from Vancouver's Island, that continent having already been separated by another navigable channel, the Rosario Strait; and further, it will be found, on tracing the line of boundary according to the literal wording of the treaty, which appears to me peculiarly precise and clear, that the line to reach the Canal de Arro must proceed for some distance in a westerly direction, for which deviation from a southerly direction no provision is made in the treaty. I, therefore, am unable to admit that the Canal de Arro is the channel of the treaty.

"6. Having thus frankly communicated in writing the views that I have already expressed to you verbally, I shall feel indebted to you if you will be so good as to favour me in like manner with your views on the subject, in order that I may devote to them every consideration and reflection.

"With the greatest respect and esteem, I beg you will allow me to subscribe myself

"Your most obedient and humble servant,

"JAMES C. PREVOST."

It will be seen that in this letter the British commissioner did not adopt the lucid argument stated by Lord Clarendon in his instructions of the 20th December, 1856, but founded his opinions (as

he was justified in doing, and, indeed, bound to do) upon a careful consideration of the wording of the treaty.

On the 2nd November, 1857, the United States commissioner, then encamped at Simiahmoo, replied as follows:(1)—

"Sir,—I have the honour to acknowledge the receipt of your letter of the 28th ultimo, embodying your views in relation to the determination of the water boundary between the United States and the British possessions, as described in the first article of the treaty of June 15th, 1846; and, in compliance with your request, I herewith communicate my views on the subject for your consideration.

"The following is the description of the whole boundary line, that part of it relating to the water boundary being underscored:—

"'From the point of the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions terminates, the line of boundary between the territories of the United States and those of Her Britannic Majesty shall be continued westward *along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel, and of Fuca Strait, to the Pacific Ocean; provided, however, that the navigation of the whole of the said channel and straits south of the forty-ninth parallel of north latitude remain free and open to both parties.*'

"It was conceded on both sides, in our recent discussions, that there would be no difficulty in tracing the boundary line through the Gulf of Georgia and the Straits of Fuca (the northern and southern extremities of the line between the forty-ninth parallel and the Pacific Ocean); but as there are several navigable channels connecting their waters, a question

(1) American State Papers, p. 11.

arose as to which of these was *the* channel intended by the treaty. These channels are caused by a cluster of islands, and are of various dimensions. Among them, however, one is found pre-eminent as to width, depth, and volume of water, and in every respect satisfying the requirements of the treaty. This channel has been known since its first discovery as the Canal de Haro, and was the only one usually designated by name on the maps in use at the time the treaty was under consideration. While the other channels only separate the islands in the group from each other, the Canal de Haro, for a considerable distance north of the Straits of Fuca, and where their waters unite, washes the shore of Vancouver's Island, and is, therefore, the only one which, according to the language of the treaty, separates the continent from Vancouver's Island.

"The objection raised that for a short distance it would not carry the boundary line in a southerly direction, and thus fails to meet one of the requirements of the treaty, I think will apply with equal force to the Gulf of Georgia, if the term southerly is to be construed in a strictly nautical or technical sense, and with still greater force to the Straits of Fuca, which, for the greater part of its course, runs northwesterly; for the language of the treaty, thence *southerly through the middle* of the said channel, *and* of Fuca Straits to the Pacific Ocean, the direction applies throughout the whole extent of line. If objection is made on this ground, the treaty will be nullified, and cannot be carried into effect. It is quite evident, however, that the term 'southerly' is to be understood only in its common and general sense. It is undoubtedly used here in apposition to northerly, and simply to show that Vancouver's Island is to be left on the British instead of the American side of the line, for it can hardly be supposed that the framers of the treaty would have ventured, with the general maps before them, to decide upon the whole course of the line, except in the most general terms. The impracticability of applying the same test to the Straits of Fuca, clearly shows in what sense the term is to be understood.

"Besides the Canal de Haro, there is a prominent channel nearer to the mainland, known at present upon the Coast Survey and British Admiralty charts as Rosario Strait. The early Spanish navigators called it the Canal de Fedalgo. Captain Wilkes named it Ringgold's Channel. It is sometimes called Vancouver's Straits or Channel; but, except on the Spanish Admiralty maps, I cannot learn that it was ever designated by name on any of the general maps of the northwest coast likely to be used at the time the treaty was made. Rosario Strait is a navigable channel, but it does not separate the continent from Vancouver's Island. In no part of its course does it touch upon the shore of either. It separates the islands of Lummi, Sinclair's, Cypress, Guemes, and Fedalgo, on the east; from Orcas, Blakely, Decatur, and Lopez Islands on the west; but in no respect does it *separate the continent from Vancouver's Island*, and cannot, therefore, in my opinion, be claimed, in accordance with the language of the treaty, as the channel therein referred to.

"There is also another navigable channel connecting the Gulf of Georgia with the Straits of Fuca. It passes between the islands of San Juan, Spieden, and Stewart on the west, and Waldron, Orcas, Shaw, and Lopez on the east; but, like Rosario Straits, fails to touch the continent or Vancouver's Island. There are besides other channels no doubt navigable, but none except the Canal de Haro answer the requirements of the treaty in all respects.

"Although I do not regard the relative merits of the navigability for sailing vessels of the Canal de Haro and Rosario Straits as having any bearing on the determination of the question before us, both being acknowledged navigable in the sense of the treaty, yet, as you have expressed an opinion thereon unfavourable to the Canal de Haro, I must beg respectfully to call your attention to the remarks of Captain Alden, of the United States navy, on the same subject. This gentleman was for many years in charge of the Hydrographic Survey of the Pacific coast, and during the working seasons of three years was engaged in examining and surveying

these channels. In a report to the Superintendent of Coast Survey in 1855, he says:—'The Gulf of Georgia and Straits of Fuca are connected by two good ship channels, called on the charts Haro and Rosario Straits. They are of sufficient width, and navigable for vessels of the largest class. The great depth of water presents a difficulty, but anchorage may be had for the most part, as the chart shows, at convenient distances along the shores.' In a previous report, in 1853, in comparing the two channels, he says, that in almost every respect the Canal de Haro is the better of the two channels. And again in the same report, after speaking of the various channels, he says, 'It will be seen that the Canal de Haro is the widest, deepest, and best channel.' He expressed to me frequently the same opinion after my arrival on this coast, during the brief period in which he was attached to the Boundary Commission as commander of the coast survey steamer *Active*. My great deference to your knowledge of nautical affairs obliges me to avail myself of the opinions of one of the most experienced and accomplished officers of our navy and coast survey upon a subject relating purely to navigation. No person, however, can travel on these inland waters, and through these channels, and fail to be impressed with the idea of their peculiar adaptation to steam navigation, and the belief is general that eventually steamboats will supersede, in a great measure, the use of sailing vessels.

"The Canal de Haro, being a much shorter communication between the Gulf of Georgia and the Pacific Ocean, would then have an advantage over Rosario Straits.

"From the views hereinbefore expressed, you will perceive that even if we adhere to the mere letter of the treaty, I am firmly convinced that the Canal de Haro is the 'channel' through which the boundary line should pass, and unless your consideration thereupon should modify your views, we are still as far from a determination of the boundary line as when we commenced the discussion of the subject. Therefore, should your opinion remain unchanged, it must be evident that, by taking the *literal* reading of the treaty alone as your guide,

we are not likely to come to an agreement, nor will its 'precise wording' solve the doubt which you intimate may arise at first sight of the chart, as to which of the two channels the boundary line should pass through. I therefore think it becomes necessary to look beyond the mere words of the treaty, and endeavour, if possible, to reach the actual intentions of the treaty makers, or using them, for, undoubtedly, they must have had in their minds some particular channel, though not designated by name in the treaty.

"The rule laid down by Vattel is, that, as soon as we meet with any *obscurity* in a treaty, we should seek for *what was probably in the thoughts of those who drew it up, and interpret it accordingly.*

"Now, however clear it may be to me that the Canal de Haro is the 'channel,' taking the words of the treaty in the most literal sense consistent with its execution, yet the fact that you are as firmly convinced that Rosario Straits is 'the channel' would imply that there was some obscurity in the language of the treaty before us. Vattel also says:—

"'It is a question in the interpretation of a treaty, to know what the *contracting powers have agreed upon, in order to determine precisely*, on any particular occasion, what has been *promised* and *accepted;* that is to say, not only what one of the parties has had the *intention* to *promise*, but, also, what the other has *reasonably and sincerely thought to be promised*, what has been sufficiently declared to him, and upon which he must have *regulated his acceptance*. . . . The interpretation of every act, and of every treaty, ought, then, to be made according to certain rules proper to determine the sense of them, such as the parties concerned *must naturally have understood* when the act was *prepared* and *accepted*.'

"He again says:—

"'The *reason* of the treaty, that is, the *motive*, which led to the making of it, and the view there proposed, is one of the most certain means of establishing the true sense; and great attention ought to be paid to it whenever it is required to explain an obscure, equivocal, and *undetermined* point.'

"Following the above rules for the interpretation of the treaty before us, so far as it devolves upon us to carry it into effect, I will proceed to prove, by contemporaneous evidence of the highest authority, that the Canal de Haro was the channel proposed by the British Government and accepted by the United States Government, as the one through which the boundary line was to be traced; and that the language of the treaty, drawn up by the British Government, was intended to convey that fact, and was so understood by the Government of the United States.

"The correspondence in relation to the treaty of June 15th, 1846, published by order of the Senate of the United States, will show, conclusively, that the reason or motive for not carrying the forty-ninth parallel as a boundary line to the Pacific Ocean was that the British Government refused to surrender the southern cape of Vancouver's Island, which was claimed by the American Government. The latter finally agreed to the proposal of the former, to make such a deflection from the forty-ninth parallel as would avoid dismembering the island. It is certainly fair to suppose that, in carrying out this intention, the nearest natural boundary would be sought by the negotiators, which the maps would show to be the Canal de Haro.

"Mr. McLane, the ambassador of the United States sent specially to Great Britain to aid in settling the Oregon boundary question, after nearly a year's negotiation, communicates (May 18th, 1846) to Mr. Buchanan, then Secretary of State, and one of the signers of the treaty, the nature of the proposal made by Lord Aberdeen for a settlement of the question, as follows:—

"'I have now to acquaint you, after the receipt of your despatches of the 15th instant, by the *Caledonia*, I had a lengthened conference with Lord Aberdeen, on which occasion the resumption of the negotiation for an amicable settlement of the Oregon question, and the *nature of the proposition* he contemplated submitting for that purpose formed the subject of a *full and free conversation.* I have now to state that

instructions will be transmitted to Mr. Pakenham, by the steamer of to-morrow, to submit a new and further proposition on the part of this Government for a partition of the territory in dispute. The proposition, most probably, will offer *substantially* as follows:—

"'1st. To divide the territory by the extension of the line on the parallel of forty-nine to the sea—that is to say, the arm of the sea called Birch's Bay, thence by the Canal de Haro and Straits of Fuca to the ocean, and confirming to the United States—what, indeed, they would possess without special confirmation—the right freely to use and navigate the strait throughout its extent.'

"Mr. McLane also states, *substantially*, the other articles of the treaty, and a comparison of the treaty itself with his statement of their substance, will show how accurately he described them, though he does not profess to give the exact words. He evidently *fully* understood the nature of the proposition to be made; and his views were communicated to his Government for the thorough understanding of the meaning of the language that would be used in the *projet* of the treaty. The very general description he gives of the water line shows, what we know must have been the case, that the framers of the treaty had before them only the general maps of the coast, and could not pretend to describe with accuracy the minute courses of the line."

"In the same letter he says:—

"'During the preceding administration of our Government the extension of the line on the forty-ninth parallel to the Straits of Fuca, as *now* proposed by Lord Aberdeen, was actually suggested by my immediate predecessor, as one he thought his Government might accept.'

"He again says:—

"'I may add that I have not the least reason to suppose it would be possible to obtain the extension of the forty-ninth parallel to the sea, so as to give the *southern cape of Vancouver's Island to the United States.*'

"From the foregoing extracts it will be clearly perceived

that the object of the projectors of the treaty was to run the line so as to avoid cutting off the southern cape of Vancouver's Island, and that the Canal de Haro was selected as the channel adapted to that object. President Polk, before accepting the proposal submitted by the British Government (received at the same time with Mr. McLane's letter), laid it before the Senate (the co-ordinate branch of the treaty-making power) for their advice on the subject, and, with his message, transmitted it; he also submitted Mr. McLane's letter of the 18th May, explanatory of the proposition or *projet* of the treaty. And it is presumed he did so that the Senate might clearly understand the nature of the proposal upon which their advice was asked. They advised him to accept it, and, in accordance with their advice, the treaty was adopted by him, and submitted to the Senate for its ratification.

"To show the Senate's understanding of the meaning to be attached to the words of the treaty—'*the channel which separates the continent from Vancouver's Island*'—I must call your attention to the language of Mr. Benton, one of the leading members of that body. In his speech on the treaty, the day of its ratification, he says:—

"'The line established by the first article follows the parallel of forty-nine degrees to the sea, with a slight deflection through the Straits of Fuca, to avoid cutting the south end of Vancouver's Island.

"'The first article of the treaty is *in the very words* which I myself would have used if the two Governments had left it to me to draw the boundary line between them.'

"And in describing the line he says:—'When the line reaches the channel which separates Vancouver's Island from the continent (which it does within sight of the mouth of Fraser River), it proceeds to the middle of the channel, and thence, turning south, through the Channel de Haro (wrongly written Arro on the maps) to the Straits of Fuca and the west, through the middle of that strait, to the sea. This is a fair partition of these waters, and gives us everything we want; namely, all the waters of Puget Sound, Hood's Canal, Admi-

ralty Inlet, Bellingham Bay, Birch Bay, and, with them, the *cluster of islands*, probably of no value, between *de Haro channel and the continent.*'

"After reviewing the other articles of the treaty, Mr. Benton concludes :—'In my high and responsible character of constitutional adviser to the President, I gave my opinion in favour of accepting the propositions which constitute the treaty. The first article is in the very terms which I would have used, and that article constitutes the treaty. With me it is the treaty.'

"I have thus presented to you, in writing, the evidence I laid before you during our discussions—that the Canal de Haro must be the channel referred to in the treaty, through the middle of which the boundary line is to be traced. This evidence is entitled to the greatest weight, considering the official positions occupied by Mr. McLane and Mr. Benton during the negotiation and ratification of the treaty, and is conclusive with me.

"I am not aware of any evidence going to show that Rosario Strait was at all in the thoughts of the negotiators of the treaty, or that it was the intention or understanding of the two Governments that the boundary line was to pass through it. The only *claim* I have been able to find, on the part of the British Government, that such was the case, is contained in a letter of Mr. Crampton to the Secretary of State (Mr. Buchanan) dated January 13th, 1848, in which he calls the attention of our Government to the expediency of endeavouring to arrive at an early settlement of everything connected with the Oregon boundary question, and particularly of the boundary line between the continent and Vancouver's Island. Mr. Crampton's letter will be found in the executive documents of the House of Representatives for 1851, accompanying the message of President Fillmore for that year. In that letter Mr. Crampton gives his opinion as to the meaning of the words, 'the channel which separates the continent from Vancouver's Island.' He says :—

"'In regard to that portion of the boundary line (the water

boundary) a preliminary question arises, which turns upon the *interpretation of the treaty*, rather than upon the result of local observations and surveys.

"'The convention of June 15th, 1846, declares that the line shall be drawn down the middle of the *channel* which separates the continent from Vancouver's Island; and upon this it may be asked what the word channel was intended to mean. Generally speaking, the word channel when employed in treaties means a deep and navigable channel. In the present case, it is believed only one channel, that, namely, which was laid down by Vancouver on his chart, has, in this part of the gulf, been hitherto surveyed and used; and it seems natural to suppose that the negociators of the Oregon Convention, in employing the word channel, had that particular channel in view.'

"From the above extracts from Mr. Crampton's letter, written within two years after the conclusion of the treaty, it will be perceived that no evidence is presented to show that the channel called Rosario Strait was the one intended by the negotiators. If there had been any evidence that such was their intention it would undoubtedly have been produced. But Mr. Crampton is mistaken even in his assumption that Vancouver's channel was the only one in that part of the gulf that had been hitherto surveyed and used; hence his inference that the negotiators of the Oregon Convention, in employing the word channel, had that particular channel in view, falls to the ground. The Canal de Haro had been both surveyed and used by the Spanish Government and our own.

"Mr. Crampton, at the conclusion of his letter, remarks that, as the question is one of interpretation, rather than of local observation and survey, it ought, in the opinion of Her Majesty's Government, to be determined before the commissioners go out. It would thus appear that the British Government regard an interpretation of the treaty as necessary to an understanding of the negotiators in employing the word channel.

"Having in this communication, as in our recent discus-

sions, frankly laid before you my views in regard to the literal meaning of the treaty, and having also shown by contemporaneous evidence what was the understanding of the Government of the United States as to the intention of the British Government in the *projet* of the treaty, and of the meaning of the words of the treaty itself, I can only repeat that my convictions in regard to the channel are so fixed that I cannot admit a doubt upon the subject.

"With the highest respect and esteem I have the honour to subscribe myself,

"Your most obedient servant,

"ARCHIBALD CAMPBELL.

"Commissioner on the part of the United States for determining the north-west boundary line.

"Capt. James C. Prevost, R.N.,

"British Commissioner North-west Boundary, &c."

To these arguments the British commissioner, on the 9th November, 1857, replied as follows: (1)—

"SIR,—I have the honour to acknowledge the receipt of your letter of the 2nd inst., containing a statement of your views of the interpretation to be put upon the first article of the treaty of the 15th June, 1846, between Great Britain and the United States, so far as the article relates to the water boundary to be traced between the possessions of the two countries.

"2. From what has passed, I think it may now be considered as established, that there is no difficulty in tracing the boundary line through the waters now called the Gulf of Georgia, and through the waters of the Straits of Fuca to the Pacific Ocean; but that it is in the space between these waters that the question arises, as to which is the channel of the treaty. I advance, that the channel now called Rosario Strait is the channel through which the boundary line should pass; you assert that your convictions 'are fixed, that the Canal

(1) American State Papers, p. 16.

de Haro is the channel in the treaty.' I have given every consideration to all the points you have advanced, and I have most carefully weighed all the arguments you have adduced in support of your views, and I regret extremely that your views and mine upon the subject should be so widely different.

"3. Before commencing to reply to the arguments you have advanced in opposition to the views I have expressed, I will state that I fully acknowledge the weight to be attached to the opinions you have quoted from Vattel, that in cases of obscurity in the language of a treaty, its interpretation is to be sought in the intentions of the negotiators; but, while fully recognising this, and while ever being ready to bow to the opinion of an authority so high as Vattel, I must, on the other hand, maintain that when the language of a treaty is clear and precise, and *will admit* to be interpreted according to *its strict* and *literal sense*, there cannot be any need to seek aught else to its elucidation.

"4. In support of my proposition that the Rosario Strait should be the channel of the treaty, I advance that it is the only channel that will admit of being considered the channel according to the treaty, which separates the continent from Vancouver's Island. You state that while the other channels only separate the islands in the group from each other, the Canal de Haro for a considerable distance north of the Strait of Fuca, and where their waters unite, washes the shores of Vancouver's Island, and is, therefore, the only one which, according to the language of the treaty, separates the continent from Vancouver's Island. Surely, this would prove the converse of the proposition. It appears to me direct proof that the Canal de Haro is the channel separating *Vancouver's Island* from the *continent;* and, therefore, so long as other channels exist more adjacent to the continent, cannot be the channel which separates the continent from Vancouver's Island. I would ask your best attention to this most peculiar language of the treaty, in which the usual terms of expression appear to be designedly reversed, for the lesser

is not separated from the greater, but the greater from the lesser; not the *island* from the *continent*, but the *continent* from the *island;* and, therefore, it would seem indisputable that where several channels exist between the two, that channel which is the most adjacent to the continent must be the channel which separates the continent from any islands lying off its shores, however remote those islands may be. You state that the Rosario Strait does not separate the continent from Vancouver's Island, because 'in no part of its course does it touch upon the shores of either,' but that it separates the Islands of Lummi, Sinclair, Cypress, Guemes, and Fedalgo on the east from Orcas, Blakely, Decatur, and Lopez Islands on the west. I would submit that the islands of Lummi, Sinclair, Cypress, Guemes, and Fedalgo are lying close to the shores of the continent, and that between *them and the continent is no navigable channel* which would answer to the channel of the treaty, and that if the Rosario Strait is the channel separating these islands from Orcas, Blakely, Decatur, and Lopez Islands, it is also the navigable channel separating the continent from them; and in separating the first-named islands from Orcas, Blakely, Decatur, and Lopez Islands, it also separates the first-named islands from San Juan, Sidney, James Islands, &c., and from Vancouver's Island; and, therefore, if separating the continent from Orcas, Blakely, Decatur, and Lopez Islands, it also separates the continent from San Juan, Sidney, James Islands, &c., and from Vancouver's Island.

"5. In answer to my statement that the Canal de Haro will not meet one of the conditions of the channel of the treaty, as it will not admit of the boundary line being carried into it in a southerly direction, you state that the objection applies with equal force to the Gulf of Georgia, if the term southerly is to be construed in a strictly nautical or technical sense, and with still greater force to the Straits of Fuca, which, for the greater part of its course, runs north-westerly, for the language of the treaty being 'thence *southerly through the middle* of the said channel, *and* of Fuca Straits, to the Pacific

Ocean,' the direction applies throughout the whole extent of the line; and you further state that 'if objection is made to this ground, the treaty will be nullified, and cannot be carried into effect. This conclusion I cannot admit. It can hardly, I think, be disputed, that when the words of a treaty *can be carried out* in their strict and literal sense, they should be so interpreted; when they cannot be so carried out, the intentions of the negotiators and the dictates of common sense have to be sought, and from them should the interpretation be deduced. From the Gulf of Georgia to the Strait of Fuca the boundary line *can be carried* through the Rosario Strait in a southerly direction; to pass through the Canal de Haro it must take a westerly course; therefore, so far as this particular is concerned, I conceive that the Rosario Strait admits of a closer adherence to the words of the treaty than does the Canal de Arro, and should for this reason, be chosen in preference to a channel which would cause a wider departure from the words of the treaty.

"6. In alluding to the necessity, in cases of obscurity, to seek the interpretation of a treaty in the intentions of its negotiators, you observe that you will 'prove by contemporaneous evidence of the highest authority that the Canal de Haro was the channel proposed by the British Government, and accepted by the United States Government, as the one through which the boundary line was to be traced, and that the language of the treaty drawn up by the British Government was intended to convey that fact, and was so understood by the Government of the United States,' and you proceed to quote from a letter of Mr. McLane, the ambassador of the United States sent specially to Great Britain to aid in settling the Oregon boundary question, and from the speech of Mr. Benton, one of the leading members of the Senate of the United States. Evidence from so high a source as this is most unquestionably entitled to the greatest respect and deepest consideration. That consideration I have given it, and I assure you it has had its full weight with me. But I would respectfully observe that neither Mr. McLane

nor Mr. Benton were actual negotiators of the treaty, and *however* valuable their opinions may be to the elucidation of obscure points, yet that these opinions can in no way alter the *actual wording* and *terms* of the treaty. Mr. McLane, in his report to the Secretary of State for the United States, writes that the proposition of the British Government *most probably* will offer substantially as follows:—

"'1st. To divide the territory by the extension of the line on the parallel of forty-nine to the sea—that is to say, to the arm of the sea called Birch's Bay—thence by the Canal de Haro and Straits of Fuca to the ocean.'

"Now this is stated to have been the probable proposition; it appears strange if it was not the *adopted proposition*, that the simple and unmistakable wording used by Mr. McLane should not have been retained. The fact that it was not retained would seem rather to show that discussion on the subject had taken place, and that the line of boundary had been designedly altered, and the wording of the treaty as it now stands substituted to meet the alteration, the channel through which the boundary line was to pass not being designated by name, inasmuch as it had no name on the map which was, I have not the least doubt, used by the British Government at the time—viz., that of Vancouver, where the channel now called the Rosario Strait is shown—*as in fact it really is*—as a continuation of the waters now called the Gulf of Georgia, the whole being named by Vancouver the Gulf of Georgia. It is quite possible that in viewing the boundary line as passing through the Canal de Haro some objection might have been made to the nearness of some of the islands to Vancouver's Island, as the objection did not apply with equal force to the continent, and as the islands between the two were deemed, according to Mr. Benton, to be barren, rocky, and valueless, it is not at all improbable that the slight alteration in the line would be conceded without difficulty, and might be considered too trivial, considering the important interests at stake at the time, for public discussion or reference. I am the more strengthened in my opinion on

this subject from having been officially informed by high and competent authority that the channel commonly known in England as Vancouver's Strait, that now called Rosario Strait, was the channel contemplated by the British Government as the channel of the treaty, and the *mention of a particular channel* by Mr. McLane, and the absence of the *name of that channel* from the treaty, altogether with the *very peculiar wording* of the treaty, would seem almost conclusively to prove the fact.

"7. I would now respectfully call your attention to the language of Mr. Benton, in the speech which he made in the Senate upon the ratification of the treaty, and had you not yourself alluded to it, I should have quoted it in further proof of what I have advanced as to the Rosario Strait being the channel 'which separates the *continent* from *Vancouver's Island.*' In describing the boundary line he designates the channel as being the one which separates '*Vancouver's Island* from the *continent*,' and he then proceeds to trace the line through the Canal de Haro to the Straits of Fuca, clearly showing what was the impression on his mind of the wording required to meet the boundary line he described. The Canal de Haro, or Arro, is, undoubtedly, the navigable channel which, at its position, separates *Vancouver's Island* from the *continent*, and therefore, while other channels exist more adjacent to the continent, cannot be the channel which 'separates the continent from Vancouver's Island.'

"8. To show that the Canal de Haro could not have been the only channel regarded in the United States as the channel of the treaty, both at the time and afterwards, I beg to mention that I have in my possession a map of Oregon and Upper California, published at Washington City in 1848, drawn by Charles Preuss, '*under the order of the Senate of the United States*,' in which the boundary line between the British possessions and those of the United States, distinctly lithographed and coloured, is carried down the Gulf of Georgia, through the channel now called the Rosario Strait, and thence through the Straits of Fuca to the Pacific Ocean. If the Canal de

Haro was the only channel contemplated by the Senate of the United States as the channel of the treaty, it seems remarkable that within a short period of its conclusion a map should be drawn '*under the order of the Senate of the United States*,' in which the boundary line between the British possessions and those of the United States, distinctly lithographed and coloured, is carried down the Gulf of Georgia, through the channel contemplated by the Senate of the United States as the channel of the treaty; it seems remarkable that within a short period of its conclusion a map should be drawn '*under the order of the Senate*,' and published and given forth to the world with a boundary line upon it not drawn through the Canal de Haro, but through the channel which I maintain is the channel of the treaty, and is the one which was contemplated by the British Government at the time of its conclusion. I have further, in my possession, an attested tracing of 'a diagram of a portion of Oregon territory,' dated Surveyor-General's Office, Oregon City, October 21st, 1852, and signed John B. Preston, Surveyor-General, in which the boundary line between the British possessions and those of the United States, is also carried through the channel lying adjacent to the continent, or through the Rosario Strait. Both these documents being official, and published by high authority, afford, I think, strong evidence that the Canal de Haro has not always been contemplated and received in the United States as the channel of the treaty.

"9. In further illustration of my proposition that the Rosario Strait is the channel of the treaty, I would observe that, apart from the very peculiar wording of the treaty, in which the greater is separated from the lesser, the continent from the island, it would seem clear that in whatever channel the boundary line commences its southerly course, it should continue '*through the middle of the said channel*,' until it reach the Straits of Fuca. Now it has been agreed that the initial point of the boundary line is found in the channel called the Gulf of Georgia, and the continuance of that channel is, as was deemed by Vancouver, through the Rosario Strait. This is

sufficiently proved by local observation, which shows that the principal body of water flows uninterruptedly from the Gulf of Georgia through the Rosario Strait, causing a regularity of current which is not found elsewhere; for the waters flowing through the Canal de Haro are split by the various islands contiguous to it in different directions, causing an irregularity and diversity of current which is not found in the Rosario Strait, and therefore the Canal de Haro cannot be deemed a continuance of the channel between Saturna Island and Vancouver's Island. Putting the question of current aside, I think a glance at the map as to which channel is in continuation of the Gulf of Georgia will sufficiently test the truth of what I assert.

"10. Having thus replied to the principal arguments you have advanced in support of the adoption of the Canal de Haro as the channel of the treaty, and having shown you how firmly satisfied I am of the correctness of my opinion as to the Rosario Strait being a channel which in all respects answers to the channel of the treaty, which the Canal de Haro does not, I trust you may, upon reflection, be induced to modify your view that the Canal de Haro is the only channel which, according to the language of the treaty, 'separates the continent from Vancouver's Island.'

"With the highest consideration and esteem, I have the honour to subscribe myself your most obedient and humble servant,

"James C. Prevost."

The United States Commissioner rejoined in the following letter: (1)—

"United States North-west Boundary Commission,
"Camp Simiahmoo, 49th parallel, November 18th, 1857.

"Sir,—I have the honour to acknowledge the receipt of your letter of the 9th instant in reply to mine of the 2nd instant.

(1) American State Papers, p. 20.

"In the communication of my views, made in compliance with your request, I clearly showed from contemporaneous evidence what was the intention of the framers and ratifiers of the treaty of June 15th, 1846, in using the words describing the water boundary line between the territories of the United States and the British possessions.

"Although the language of the treaty alone is sufficiently explicit to my mind, the disagreement between us, in respect to a part of the distance through which the boundary line is to be traced, rendered it, in my opinion, desirable, if not necessary, in order to carry the treaty into effect, that we should arrive at a mutual understanding of the actual intention of the treaty makers, and for that purpose that we should resort to the ordinary mode of interpretation in cases of obscurity or uncertainty. I, therefore, deemed it but an act of frankness to exhibit to you the evidence I had in my possession of the *intention* of the British Government in framing the language of the treaty, and of the *understanding* of the United States Government in adopting it. Considering the character of this evidence, and the weight to which it is entitled, it is difficult for me to comprehend how you could resist the conclusion to which it so clearly led,—viz., that 'the channel' referred to in the treaty was intended to apply to the Canal de Haro.

"With this clear and satisfactory evidence, answering in the fullest manner to the requirements of the rules laid down for ascertaining the true meaning of the language of a treaty, it is pursuing the shadow instead of the substance to confine ourselves to its mere words; and, judging by the course of argument adopted by you in your present communication, I infer that you do not now altogether disagree with me in that opinion. As you seem, however, to attach importance to what you call the *peculiar* wording of the treaty in regard to the relative position of the words, the *continent* and *Vancouver's Island*, I have carefully considered your argument thereon, but cannot perceive its force. The words of the treaty are, 'the channel which separates the

continent from *Vancouver's Island*,' and, in my opinion, they are placed in their proper position. Nothing could be more natural, in tracing and describing the long line of land boundary from the Rocky Mountains westward, than for the authors of the treaty to place the continent before Vancouver's Island; and it would be strange if they had done otherwise. Still I do not conceive that a change in the position of the words could make any difference in the meaning of the expression.

"The argument you draw from Mr. Benton's speech on this point is the one of all others I should bring forward (if I thought any necessary) to show there was no peculiarity in the wording of the treaty, or, if there were any, that it was in favour of the Canal de Haro; for Mr. Benton, after stating that the first article of the treaty is in the very words he would have used himself if the two Governments had allowed him to draw it up, and with the very words of the treaty before him as he spoke, uses the expression, 'the channel which separates *Vancouver's Island* from the *continent*,' as conveying precisely the same meaning as the language of the treaty; for he immediately thereafter declares that this language carries the line through the Channel de Haro, and 'gives us' the 'cluster of islands' between that channel and the continent. Surely no fair deduction can be drawn from the remarks of Mr. Benton to show that the language of the treaty, in his opinion, required a transposition of the words to carry the boundary line through Canal de Haro. After using the expression, reversing the order of the words of the treaty, he says, 'I am in favour of the first article of the treaty *as it stands*.' He certainly would not have said this if, as you assert, he must have thought it required a change in the wording of the treaty to make the language applicable to the Canal de Haro.

"Your admission that the 'Canal de Haro is undoubtedly the navigable channel which at its position separates Vancouver's Island from the continent,' in my opinion is equivalent to the settlement of the question — the continent, according to the well-known geographical fact that islands are

appurtenant to the mainland, embracing as natural appendages to its coast the islands between it and the Canal de Haro. Your argument that the Rosario Straits must be the channel which separates the continent from Vancouver's Island would apply with equal force to Vancouver's Island if it were situated as far distant as the Sandwich Islands. For, you say: 'It would seem indisputable that where several channels exist between the two (that is, between the continent and Vancouver's Island) that channel which is the most adjacent to the continent must be the channel which *separates the continent* from *any islands* lying off its shores, *however remote those islands* may be.' This process of reasoning would elevate an island to a much higher degree of importance than a continent, by making all intermediate islands appendages to it instead of to the continent, a doctrine which I am not prepared to admit, nor do I think, upon further reflection, you will maintain.

"You decline to admit the correctness of my conclusion that if the term 'southerly' be taken in a strictly technical or nautical sense, the treaty cannot be carried into effect. But I do not understand you as denying the fact that the word 'southerly' applies equally to the Straits of Fuca as to the channel which separates the continent from Vancouver's Island. Still, while denying a liberal construction of term as far as may be applicable to the Canal de Haro, you appear to be willing to appeal to the dictates of common sense, or to seek for the intention of the negotiators of the treaty when it applies to the Straits of Fuca. I must respectfully repeat, if the term 'southerly,' as used in the treaty, is to be construed as you still construe it in relation to the course of the Canal de Haro, the same meaning must be given to it in regard to the course of the Straits of Fuca, for the channel and straits are so connected in the language of the treaty as to be governed by the preceding words, 'southerly through the middle of.' The object of my remarks on that subject was to prevent the treaty from becoming a nullity, by adopting the natural meaning of the word instead of its

strictly technical or nautical sense; but it seems to me not entirely just to apply it in one sense to the Canal de Haro and in another to the Straits of Fuca. I think, therefore, you will be obliged to abandon your objection to the Canal de Haro on the ground that a line cannot be traced through it in a southerly direction. I refer to Mr. Benton's speech for his understanding of the word to confirm my own. In giving his reasons for voting in favour of the treaty he says: 'When the line reaches the channel which separates Vancouver's Island from the continent, it proceeds to the middle of the channel, and thence *turning south* through the Channel de Haro to the Straits of Fuca, and thence *west* through the middle of that strait to the sea.' Here is the true reading of the language of the treaty, and it is in perfect accordance with that contained in my letter of the 2nd instant.

"In your remarks upon the evidence of Mr. McLane and Mr. Benton, showing which 'channel' was intended and proposed by the British Government, and understood and accepted by the United States Government, you observe that 'it has had its full weight' with you, but add that 'neither Mr. McLane nor Mr. Benton were the *actual negotiators* of the treaty, and however valuable their opinions may be to the elucidation of obscure points, yet these opinions can in no way alter the *actual wording* and *terms* of the treaty.'

"I am not aware that there is any rule in the law governing the interpretation of treaties that would require the evidence of the actual negotiators. What is required in such cases is that which was probably in the thoughts of the author or authors of the treaty. And here I beg to call your attention on that point to the quotations (in my letter of the 2nd instant) from Vattel in his article on the interpretation of treaties, by which you will perceive that I have gone much further than is required. I have shown their actual *intentions* at the time the treaty was drawn up, proposed, and accepted, and I propose to go a step further and show that this intention and understanding remained unchanged up to the complete ratification of the treaty by both Governments.

"Although Mr. McLane and Mr. Benton were not the signers of the treaty, both of them had that official connection with the negotiation that gives their evidence equal weight with that of the signers themselves, and in the absence of evidence from the latter it must be regarded as indisputable. Nothing short of positive contradictory testimony from equally reliable authority can invalidate it.

"I will, however, show you clearly the understanding of Mr. Buchanan, the Secretary of State, one of the negotiators and signers of the treaty. Immediately upon the receipt of Mr. McLane's letter of the 18th of May, stating the *substance* of the *proposition* that was to be made by Lord Aberdeen, a conference was held in the State Department between Mr. Buchanan and Mr. Pakenham. The protocol of this proceeding accompanied the President's message to the Senate asking their advice as to the acceptance of the proposition. It is as follows:—

"'A conference was held at the Department of State on the 6th of June, 1846, between the Hon. James Buchanan, Secretary of State, the American plenipotentiary, and the Right Honourable Richard Pakenham, the British plenipotentiary, when the negotiation respecting the Oregon territory was resumed. The British plenipotentiary made a verbal explanation of the motives which had induced Her Majesty's Government to *instruct* him to make *another proposition* to the Government of the United States for the solution of these long-existing difficulties. The Secretary of State expressed his satisfaction with the friendly motives which had animated the British Government in this endeavour. Whereupon the British plenipotentiary *submitted* to the Secretary of State the draught of a convention (marked A) setting forth the *terms* which he had been *instructed* to propose to the Government of the United States for the settlement of the Oregon question.'

"The draught of the convention is in the same words as the ratified treaty. The instructions of Lord Aberdeen, and Mr. McLane's letter to Mr. Buchanan, stating the nature of the proposition to be submitted for the settlement of the

Oregon question, were dispatched to the United States by the same steamer the day after their conference, and the letter was received in Washington on the 3rd of June. The conference between Mr. Buchanan and Mr. Pakenham was held on the 6th of June. On the same day Mr. Buchanan writes to Mr. McLane as follows :—

"'I transmit to you herewith a copy of the *projet of a convention*, delivered to me by Mr. Pakenham this morning, for the adjustment of the Oregon question, together with a copy of the protocol of the proceeding. This being the regular day for the meeting of the Cabinet, the subject was brought before them by the President. The result was a determination on his part to submit the *projet* to the Senate for their previous advice. This will be done as soon as the proper message can be prepared, and the *necessary papers* copied.'

"The papers necessary to accompany this *projet* of the treaty were the protocol mentioned above and a copy of Mr. McLane's letter of the 18th of May, containing his statement of the substance of the treaty as communicated to him by Lord Aberdeen. The object of sending this letter to the Senate was to explain to the senators the intentions of the British Government as to the details of the treaty, that they might be able to give their advice to the President understandingly. And as the letter was copied in the Department of State by direction of Mr. Buchanan, to accompany the *projet* of the treaty, it must be considered as expressing the understanding between himself and Mr. Pakenham ; being in harmony with the *proposition* submitted to him by the latter in conformity with the instructions he received from his Government. It is, therefore, quite clear that Mr. Buchanan must have understood the language describing the boundary line in the treaty as intending the 'Canal de Haro' for 'the channel which separates the continent from Vancouver's Island.' With the letter of Mr. McLane in his possession, and deeming it necessary that it should accompany the *projet* of the treaty to the Senate for their information, there cannot be a doubt that

Mr. Buchanan and Mr. Pakenham understood the language of the treaty alike.

"You state that Mr. McLane, in his report to the Secretary of State, writes that the proposition of the Government 'most probably will offer substantially as follows,' and quotes his language, giving the substance of the first article of the treaty; and add, 'Now this is stated to have been the *probable proposition;* it appears strange, if it was the *adopted proposition*, that the simple and unmistakable wording used by Mr. McLane should not have been retained.

"Mr. McLane could hardly have used a stronger expression to convey to his Government the intentions of Lord Aberdeen, as communicated to him in their 'full and free conversation,' and 'lengthened conference,' than the words 'most probably,' without having actually seen his despatches to Mr. Pakenham. At the date of his letter he most certainly believed that the proposition would be *substantially* as he stated, for he does not pretend to give the *words* of the treaty in his statement of *any* of the articles, but confines himself to its spirit and gives its substance. Having stated this fact in my previous letter, it ought not to appear strange to you that 'the simple and unmistakable wording used by Mr. McLane should not have been retained.'

"With the *projet* of the treaty and the chart before them, Mr. McLane and Lord Aberdeen could not fail to see at a glance that the concise language of the treaty clearly indicated 'the channel which separates the continent from Vancouver's Island.' The Gulf of Georgia washing the continent at the northern end of the line; the Canal de Haro, Vancouver's Island, at the southern end, and at its junction with the Straits of Fuca, presented to the eye a continuous channel that unmistakably separated, throughout its whole length, the continent from Vancouver's Island, and about which it might well have been supposed by them (with their full knowledge of the motive that induced this deflection from the forty-ninth parallel) there could be no question. But a glance at the chart of the United States Coast Survey, on a large scale,

accurately defining the space through which the boundary line is to be traced, will show much more forcibly how well the language of the treaty was chosen to express in few words the object of the negotiators.

"On the assumption that the language used by Mr. McLane to describe the boundary line had been *originally* the words of the proposition (or *projet* of the treaty), and not *retained*, you say that it 'would seem rather to show that discussion on the subject had taken place, and that the line of boundary had been *designedly altered*, and the wording of the treaty as it now stands *substituted* to meet the alteration.'

"I am somewhat at a loss to know between whom you suppose this discussion to have taken place; whether between Mr. McLane and Lord Aberdeen, or between Mr. Buchanan and Mr. Pakenham. It could not have been between the former, for it would not appear that there was any opportunity for discussion after their conference, and before the departure of their despatches; or if it had been, Mr. McLane would certainly have notified his Government of the fact. Nor do I see how any discussion could have taken place between Mr. Buchanan and Mr. Pakenham that could have effected any alteration in the proposition; for it would appear that Mr. Pakenham had neither power to accept nor offer modifications, as will be seen by an extract from Mr. McLane's letter, and his own statement in the conference with Mr. Buchanan. Mr. McLane says:—

"'It may be considered certain also in my opinion that the offer now to be made is not to be submitted as an ultimatum, and is not intended as such, though *I have reason to know that Mr. Pakenham will not be authorised to accept or reject any modification* that may be proposed on our part, but that he will in such case be instructed to refer the modification to his Government.'

"From the foregoing extract it will be perceived that Mr. Pakenham had no authority to *accept* any proposed alteration to the treaty, though it is not presumed the proposition for the change you suggest could have been expected from Mr.

Buchanan. On the other hand, Mr. Pakenham was not authorised to *propose* any modifications, as has been seen from his conference with Mr. Buchanan, June 6th, in which he submits 'the *draught* of a *convention* setting forth the *terms* which he had been *instructed* to propose to the Government of the United States for the settlement of the Oregon question,' which could not have been otherwise than in conformity with the terms of the proposition communicated by Lord Aberdeen to Mr. McLane. I cannot, therefore, admit that the original proposition was 'designedly altered' with the consent of either Mr. Buchanan or Mr. McLane. Nor can I agree with you that the islands you refer to, 'barren, rocky, and valueless' as they might then have been deemed, would have been conceded as readily as you suppose, after the positive assertions of the President (communicated to Mr. McLane by Mr. Buchanan) that he would not consent to surrender any territory claimed by the United States south of the forty-ninth parallel, with the exception of the southern end of Vancouver's Island. I cannot conceive the motive which could induce any officer of the United States Government to surrender a portion of the territory which the line proposed by the British Government threw on the American side, when at the same time he knew the proposition was not an *ultimatum, and not intended as such*, as will be seen from the extract of Mr. McLane's letter heretofore quoted. In addition thereto he says :—

"'I do not think there can be much doubt, however, that an impression has been produced here that the Senate would accept the proposition now offered, at least without *any material modification*, and that the President would not take the responsibility of rejecting it without consulting the Senate. If there be any reasonable ground to entertain such an impression, however erroneous, *an offer less objectionable, in the first instance, at least, could hardly be expected.*'

"And he again says :—

"'Feeling very sure, however, that the present offer is not made or intended as an ultimatum, I think it only reason-

able to infer an expectation on the part of those who are offering it, not only that modifications may be suggested, but that they may be reasonably required.'

"From the foregoing extracts you must perceive that the United States Government was not in a position to make concessions, and from the speech of Mr. Benton, which I submitted to your perusal, you will have seen that a portion of the members of the Senate insisted upon modifications, which would have been asked of the British Government, if Mr. Pakenham had been authorised to grant them, and were only prevented from doing so by the delay incident to sending to England.

"I cannot therefore admit that any such alteration as you suggest could have possibly taken place. Everything connected with the settlement of the Oregon question was at that time deemed important. And no officer of the United States Government would have ventured to make such a concession without its being fully understood by all who had any connection with making or ratifying the treaty. Even the reason you suggest for the concession is one which would apply with greater force against the boundary line running through Rosario Straits than through the Canal de Haro; for Rosario Straits being narrower than the Canal de Haro, the objection to the former applies with greater force than it does to the latter. After much reflection and consideration, I am quite unable to conceive when and where this 'designed alteration' could have taken place, and if it be not an entire supposition, I would respectfully ask for further information on the subject, in order that I may regulate my judgment accordingly.

"Your opinion that the line of boundary was altered, you say, is strengthened by your 'having been officially informed, by high and competent authority, that the channel commonly known in England as the Vancouver Strait—that now called the Rosario Strait—was the channel contemplated by the British Government as the channel of the treaty; and the *mention of a particular channel* by Mr. McLane, and the

absence of the *name of that channel* from the treaty, together with the *very peculiar wording* of the treaty, would seem almost conclusively to prove the fact.'

"I have no means of determining the source from which the high and competent authority you refer to received his information; but I would respectfully suggest that, after the cotemporaneous documentary evidence I have produced, the mere assertion of any person at this time, no matter what his position may be, unless he was immediately concerned in the negotiation of the treaty, can be of little weight. It is quite possible that the British Government may have *contemplated* Rosario Straits as the channel; but I would respectfully submit that they *proposed* the Canal de Haro, and that the United States Government *accepted* that proposition.

"In your endeavour to show that the Canal de Haro could not have been the only channel regarded in the United States as the channel of the treaty, both at the time of its ratification and afterwards, you state that you have in your possession a 'Map of Oregon and Upper California, published at Washington City in 1848, drawn by Charles Preuss, "*under the order of the Senate of the United States*," in which the boundary line between the British possessions and those of the United States, distinctly lithographed and coloured, is carried down through the channel now called Rosario Straits,' &c. You further say that, if the 'Canal de Haro was the only channel contemplated by the Senate of the United States as the channel of the treaty, it seems remarkable that within a short period of its conclusion a map should be "drawn under the order of the Senate," and published and given forth to the world with a boundary line upon it, not drawn through the Canal de Haro,' but through Rosario Straits.

"I have also in my possession a copy of the same map, and, as its title declares, it is a 'Map of Oregon and Upper California, from the surveys of John Charles Frémont and other authorities,' and is accompanied by a geographical memoir, which was also published by the Senate at the same time. By an examination of that memoir, it will be seen

that the accurate delineation of the boundary formed no part of the object for which the map was directed. The boundary line north, as well as south, on that map was drawn merely to show the extent of the country described in the memoir.

"By a comparison of the Mexican or southern boundary on the same map with the true line as defined by the commissioners and surveyors appointed under the treaty, an error quite as remarkable will be found on that line as on the northwestern boundary, and one which, upon examination, must completely dispel any impressions that may have been made upon your mind that it has any authenticity, or is of any authority whatever as a *map showing the boundary between the British possessions and the United States.* The best evidence of this is to be found in the fact that, after its publication, the Mexican boundary line was surveyed and marked by the United States Government without reference to Mr. Preuss's map, and the true line was found to be *totally different* from that laid down by Mr. Preuss.

"By examining carefully the lithographed line on this map, drawn from the forty-ninth parallel to the Straits of Fuca, it will be seen that, instead of running through the middle of Rosario Straits, as you suppose, it runs directly against Sinclair's Island on the north, and Cypress Island on the south, leaving a space of over five miles without any boundary line; but if this should be joined, it would bisect the two islands. It also runs tangent to Smith's Island on the eastern side—an island upon which it is the intention of the United States Government to build a light-house, and for which an appropriation has been made.

"I point out the inaccuracies of this map, so far as relates to the boundary line, without any intention of depreciating it in any respect, but simply in order to show you that it is not considered authority for the boundary lines drawn upon it, and that it was not intended to be so considered. I could exonerate the Senate from censure for publishing the map and giving it forth to the world with their apparent sanction, but

I presume it will hardly be necessary for me to do so on this occasion.

"I have never seen the diagram, alluded to by you, of a portion of Oregon territory, dated 'Surveyor-General's Office, Oregon City, October 21, 1852, and signed by John B. Preston, Surveyor-General,' and having the boundary line drawn through Rosario Straits; but no authority can be attached to it, as it formed no part of the duties of the Surveyor-General's Office to determine the boundary line between the United States and British possessions. I am, however, informed, by credible authority, that Mr. Preston was led into the error by seeing the map of Mr. Preuss. Had he seen the 'Map of Vancouver's Island and the Adjacent Coasts, compiled from the surveys of Vancouver, Kellet, Simson, Galiano, and Valdes, &c. &c. &c. by J. Arrowsmith, 10, Soho Square, London, published April 11, 1849'—more recent than that of Preuss—he, no doubt, would have drawn the line through the Canal de Haro; for as that purports to be a map especially of 'Vancouver's Island and the *coasts adjacent*,' no doubt could have been entertained that much care was taken to make it accurately conform to the terms of the treaty. On that map, on a large scale, all the islands east of the Canal de Haro are coloured carefully with the same tint as that given to the territory to which they geographically and conventionally pertain—viz., that of the United States.

"The maps of Preuss and Preston are of no authority as far as the boundary line is concerned. They therefore afford no evidence of the true channel of the treaty. And since its ratification, I am not aware of any authority having been given either by the United States or the British Government for surveying and mapping it definitively until the appointment of the present Commission.

"'In further illustration' of your proposition that 'the Rosario Strait is the channel of the treaty,' you say that 'it would seem to be clear that, in whatever channel the boundary line commences its southerly course, it should continue through the middle of the said channel until it reaches the Straits of

Fuca,' and add that 'it has been agreed that the initial point of the boundary line is found in the channel called the Gulf of Georgia, and the continuance of that channel is, as was deemed by Vancouver, through the Rosario Strait.'

"I fear there is some misunderstanding in regard to an initial point. I certainly am not aware of having agreed to any, though I do not deem it a matter of any moment whether the starting-point of the line be at the forty-ninth parallel or the Pacific Ocean. But even granting that the line starts at the forty-ninth parallel, and is traced through the middle of the Gulf of Georgia, I do not admit that it must necessarily be continued through Rosario Straits, even if Vancouver's chart be referred to. You say Vancouver considered Rosario Strait a continuation of the Gulf of Georgia, and that it was included in that name. By an examination of the chart it will be perceived that the name as lettered passes directly through and over the cluster of islands between the Canal de Haro and the straits now called Rosario Straits, and that it was intended by Vancouver to apply the name of *Gulf of Georgia* to *all* the waters between Vancouver's Island and the continent as far south as Fuca Straits (if the lettering on his chart is to be considered as any guide), and applies equally to every other channel in the vicinity. But whatever name may have been given to the waters broken up by the islands, they are all continuations of the waters proceeding from the *Straits of Fuca* or *Gulf of Georgia*, and all perfectly on an equality in that respect. The Canal de Haro having the largest volume of water passing through it, it is the *main channel* among them, and therefore more particularly entitled to be considered as *the* continuation or connection of the two channels with which all are directly or indirectly connected. And here I beg to say, in regard to the relative merits of the two channels, I must again refer you to the extract from Captain Alden's report on that subject in my letter of the 2nd instant, in which he pronounces the Canal de Haro to be the widest, deepest, and best channel, and in almost every respect the better of the two.

"Upon your supposition that the Canal de Haro had originally been named in the *projet* of the treaty, and that 'the line of boundary through it had been *designedly altered*, and the wording of the treaty as it now stands *substituted* to meet the alteration,' you found an argument to prove that Rosario Straits was 'the channel' intended as the substitute for the Canal de Haro as follows:—'The channel through which the boundary line was to pass *not being designated by name*, inasmuch as it *had no name* on the map which was, I have not the least doubt, used by the British Government at the time, viz., that of Vancouver, where the channel, now called the Rosario Strait, is shown, *as in fact it really is*, as a continuation of the waters now called the Gulf of Georgia, the *whole being named* by Vancouver the *Gulf of Georgia*.'

"It has been acknowledged that the Rosario Straits, in common with the other channels, is a continuation of the Gulf of Georgia, and that the general name of the 'Gulf of Georgia' was given by Vancouver to embrace all the waters between the continent and Vancouver's Island as far south as the Straits of Fuca. But I have shown from his chart that Vancouver did not particularly apply it to the channel called Rosario Straits. If, however, the British Government so understood it, and the 'Canal de Haro' was dropped from the original *projet* of the treaty, as you suppose, for the purpose of substituting what was then considered a part of the Gulf of Georgia, it is strange that 'the Gulf of Georgia' was not inserted instead of the present language, so inapplicable to Rosario Straits. In this argument, if I understand it correctly, Rosario Straits is claimed as the channel for two very different reasons—one because it had a name, the other because it had no name. If the Canal de Haro were mentioned in the original *projet*, and afterwards expunged to give place to a channel without a name, care should have been taken so to describe it that no other channel, either with or without a name, could be found answering to the language of the treaty.

"In a previous part of this communication I proposed to

show that the intention and understanding of the British and United States Governments in relation to the water boundary remained unchanged from the conference between Lord Aberdeen and Mr. McLane until the complete and final ratification of the treaty by the two Governments. After the message was prepared and the necessary papers copied at the State Department, the President transmitted them to the Senate on the 10th of June for their advice as to his acceptance or rejection of the *projet* of the treaty submitted by Mr. Pakenham in his conference with Mr. Buchanan. The motive that induced the President to take the unusual course of asking the previous advice of the Senate arose from the prominent part taken by the Senate in the discussions of the Oregon question, and the importance the British Government attached to the opinions and action of that body, as will have been seen by the extracts from Mr. McLane's letter heretofore quoted. As I am desirous of showing you the exact position the Senate occupied in relation to the negotiation and ratification of the treaty, I must make one more extract from Mr. McLane's letter on that subject:—

"'It is not to be disguised (he says) that since the President's annual message and the public discussion that has subsequently taken place in the Senate, it will be difficult, if not impossible, to conduct the negotiation in its future stages, without reference to the opinion of senators, or free from speculation as to the degree of control they may exercise over the result. Whatever, therefore, might be prudent and regular in the ordinary course of things, I think it of the utmost importance upon the present occasion, if the President should think proper to propose any modification of the offer to be made by Mr. Pakenham, that the modification should be understood as possessing the concurrence of the co-ordinate branch of the treaty-making power.'

"After several days' debate the Senate advised the President 'to accept the proposal of the British Government for a convention to settle boundaries, &c., between the United States and Great Britain west of the Rocky or Stony Mountains.'

"In accordance with that advice the President accepted the proposal, and on the 16th of June laid before the Senate, for their 'consideration, and with a view to its ratification.' 'the convention concluded and signed by the Secretary of State on the part of the United States, and the envoy extraordinary and minister plenipotentiary of Her Britannic Majesty on the part of Great Britain.'

"Upon its receipt a debate ensued, which resulted in a resolution, 'that the President be requested to communicate to the Senate a copy of all the correspondence which has taken place between this (the United States) Government and that of Great Britain relative to the Oregon treaty, together with the despatches and instructions forwarded to our minister, Mr. McLane, and a full and complete copy of his despatches and communications to this Government on the same subject not heretofore communicated to the Senate.'

"The scope of the resolution exhibits the deep interest manifested by the Senate in every step of the negotiation, and shows clearly that no detail connected therewith was deemed unworthy of their consideration.

"On the 18th of June the Senate gave its 'constitutional advice and consent to the treaty,' and the President ratified it. On the 22nd Mr. Buchanan transmitted to Mr. McLane at London the treaty ratified by the President and Senate, with 'special power,' authorising him 'to exchange the ratifications with such person as may be duly empowered for that purpose on the part of the British Government.' The ratifications were exchanged by Mr. McLane and Lord Palmerston.

"From the incipient step taken by Lord Aberdeen, in making the proposition to the United States Government for a settlement of the Oregon question, and through all the subsequent stages in the progress of the treaty to its complete ratification, we look in vain for any evidence that the original proposition communicated to Mr. McLane was ever altered. I have shown that Mr. Buchanan and Mr. Pakenham must have understood it alike.

"The President—from whom emanated all the instructions in relation to the negotiation—in transmitting the proposal of the British Government to the Senate for their advice, accompanied it by Mr. McLane's letter furnished for their information and consideration in giving that advice. Therefore there can be no doubt of his understanding of the language of the treaty. It cannot for a moment be supposed that such grave, deliberate, and unusual action would have been taken, without the most perfect understanding on his part of the meaning of the document he laid before them. The letter of Mr. McLane accompanying his message conveyed that meaning.

"The Senate upon this extraordinary occasion gave their advice to accept the proposition. And upon what did they found their advice? Upon the words of the *projet* of the treaty, and the explanation of the same more in detail by Mr. McLane. They believed them to be in perfect harmony. A perusal of Mr. Benton's speech upon the ratification of the treaty will show how exactly he, as one of the co-ordinate branch of the treaty-making power, understood the proposal of the British Government to agree with Mr. McLane's statement of it, when he advised the President to accept it. In that speech he says:—

"'In my high and *responsible* character of constitutional adviser to the President, I gave my opinion in favour of accepting the propositions which constitute the treaty, and advised its ratification. The first article is in the very terms which I would have used, and that article constitutes the treaty. With me it is the treaty. The remaining three articles are subordinate and incidental, and only intended to facilitate the execution of the first one. The great question was that of boundary.'

"The first article being the treaty, in Mr. Benton's opinion, he must have made himself well acquainted with its full meaning. The leading position he occupied on the Oregon question is well known. In expounding the treaty to his colleagues, he describes the boundary line, and designates the 'Canal de Haro' as 'the channel' through which the line

is to pass. He had before him the treaty and the letter of Mr. McLane, and he gives his advice and consent to the ratification of the treaty 'with a mind clear of doubt,' for he says, 'The great question of the boundary is settled.'

"The injunction of secrecy was removed from the executive proceedings, correspondence, and documents, relating to Oregon, and they became a portion of the public documents of the Senate. As a documentary history of the negotiation, published to the world, by order of the Senate, upon the conclusion of the treaty, they are entitled to all the credit which is due to undisputed cotemporaneous evidence. Taken in connection with the speech of Mr. Benton, giving *fully* his views of the meaning of every article of the treaty, it forms a chain of evidence proving conclusively that the line of boundary between the United States and the British possessions, after it deflects from the forty-ninth parallel, was intended by the language of the treaty to run through the middle of the Gulf of Georgia and the Canal de Haro, and thence through the middle of Fuca Straits to the Pacific Ocean.

"From the foregoing communication you will perceive that I have given the most careful consideration and study to the additional arguments you have advanced, and the evidence you have adduced, to prove Rosario Straits to be a channel which in every respect answers to the language of the treaty; but I must frankly, though with the most respectful deference to your opinion, acknowledge that they have failed to convince me. I have, on the other hand, endeavoured to rebut your arguments against my views in regard to the channel, which I need hardly say have only been strengthened by reflection since my letter to you of the 2nd instant.

"With the most perfect respect and esteem, I beg to subscribe myself, your most obedient and humble servant,

"ARCHIBALD CAMPBELL,
"Commissioner on the part of the United States for
"determining the North-west Boundary Line.

"James C. Prevost, Esq.,
"British Commissioner North-west Boundary, &c."

On the 20th November, the fifth meeting of the joint commission was held, and Captain Richards, who had arrived in the interim, was introduced to the United States Commissioner. On the 24th, Captain Prevost replied to the letter of that commissioner as follows :(1)—

"Her Britannic Majesty's Ship *Sateilite*,

"Simiahmoo Bay, Gulf of Georgia, November 24, 1857.

"Sir,—I have the honour to acknowledge the receipt of your letter of the 18th instant, in reply to mine of the 9th instant, upon the subject of the interpretation to be given to part of the first article of the treaty between Great Britain and the United States, of 15th June, 1846.

"2. I have given to your said letter the most careful consideration, but it appears to me for the most part only a recapitulation at greater length of the testimony you have already adduced in support of your views of 'the channel which separates the continent from Vancouver's Island,' and to which I have already replied in a previous communication; nevertheless, there are one or two points you have commented upon, that I deem it but right to notice.

"3. You state that my 'admission that the Canal de Haro is undoubtedly the navigable channel which at its position separates Vancouver's Island from the continent,' is, in your opinion, 'equivalent to the settlement of the question; the continent—according to the well-known geographical fact that islands are appurtenant to the mainland—embracing, as natural appendages to its coasts, the islands between it and the Canal de Haro.' I would respectfully observe to you that in the first article of the treaty, the direction of the water boundary line is pointed out by reference to natural objects, which are distinctly denominated, and I must conceive, with all deference to your adverse opinion, that those objects must be viewed according to their natural signification; and that

(1) American State Papers, p. 30.

the continent means the *continent* in as strict a sense as the island means the *island*, and neither literally nor geographically can an island be deemed the continent, as you would seem to imply. When terms are unmistakable, and can be interpreted closely and literally as the words of the treaty in this case can, that seems to me to be no strong argument which requires for its support such a latitude of meaning as you would claim in your interpretation of the word continent. I maintain that the continent as well as the island must be regarded according to its natural signification, and according to its natural position; and when two or more channels exist between a continent and a particular island, the argument appears to me irresistible that the channel contiguous to the continent is the channel separating the continent from the island, while the channel contiguous to the island is the channel separating the island from the continent. It matters not what may lie between the two to form the channels, whether it be an archipelago of islands, or a group of sunken rocks. It also seems to me a fact equally irresistible, that in such case a transposition of words must convey an opposite meaning, and I must acknowledge myself at a loss to conceive how you can maintain that they do not. In the case I have put, the channels have surely some means of being described apart from any nominal designation, and I see no more direct or positive way than that I have defined. Therefore, while the words of the treaty pointedly provide that the boundary line is to run through the channel which separates the *continent from* the *island*, I can never agree that the Canal de Haro, as the channel separating the *island* from the *continent*, can be the channel which separates the continent from the island, and consequently the channel of the treaty. 'This process of reasoning' in no way affects either the 'importance' of the island or the 'importance' of the continent; it is but placing natural objects in their natural position, and dealing with them accordingly.

"4. Your principal arguments in favour of the Canal de Arro being the channel of the treaty are based upon the cor-

respondence of Mr. McLane, and upon the speech of Mr. Benton, and from the former you draw an inference that the Canal de Haro was the channel *proposed* by the British Government. This inference I cannot adopt. I do not perceive in anything that has been produced any evidence that the Canal de Arro was proposed by the British Government. The mention of the Canal de Arro by Mr. McLane in his letter of 18th May, 1846, cannot surely be cited as a proof that this channel was so proposed. He reports the result of a conversation, and mentions what would *probably* be offered. The fact that the Canal de Arro was *not* offered, is, I think, sufficiently established in the absence of the name, both from the draught of the convention presented on the 6th of June, 1846, by Mr. Pakenham, to which you allude, and from the treaty itself. I can never suppose that the British Government, in retaining Vancouver's Island, would consent to give up the channel which was best known in England at the time the treaty was negotiated, and in place thereof adopt a channel which, at that time, was scarcely, if at all, known by them to be navigable. The channel now called the Rosario Strait was known in England as the navigable channel of the day, it was the channel through which Vancouver sailed, and it was the channel used by the vessels of the Hudson's Bay Company since 1825, in their communications with the northern parts of the continent or island, and I think you will agree with me in deeming it, under these circumstances, scarcely possible that the British Government should knowingly forego the treaty right of navigating the channel thus generally used. Even in the present day, when the Canal de Arro is comparatively well known, I unhesitatingly assert that sailing vessels, proceeding from the southern ports of Vancouver's Island to the northern settlements, would scarcely ever use the Canal de Arro in preference to the Rosario Strait, and I should be surprised if Captain Alden, of the United States navy and Coast Survey, whose remarks you have quoted, did not agree with me in this opinion, for in none of his observations that you have adduced do I find any opinion that the

Canal de Arro is preferable to the Rosario Strait for *sailing vessels.*

"The high and official authority to whom I alluded in my letter of the 9th instant, as the source of my information that the Vancouver (or Rosario) Strait was the channel contemplated by the British Government, is Her Majesty's present Secretary of State for Foreign Affairs, the Earl of Clarendon, and I cannot presume that he would intimate to me in writing, as he has done, that such was the case unless he had substantial grounds for doing so. That the United States Government may have contemplated the Canal de Arro as the channel of the treaty I do not attempt to dispute, but I firmly maintain that the British Government contemplated the channel through which Vancouver passed—that now known as the Rosario Strait. I cannot, however, but deem that all this is, to a certain extent, extraneous matter. I must again respectfully submit to you that neither the correspondence of Mr. McLane, nor the speech of Mr. Benton, can in any way alter the actual wording and terms of the treaty. Their opinion, however valuable it may be, cannot divert the words of the treaty to an interpretation which, I conscientiously maintain, they literally will not admit. To my mind the wording is peculiarly explicit, and while firmly holding this opinion, it does appear to me an undoubted pursuit of the 'shadow' to enter into the discussion of extrinsic documents and evidence, when we can so readily grasp the 'substance' by a strict adherence to the terms of the treaty. As you have quoted the opinion of Vattel regarding the interpretation of treaties in cases of obscurity, I beg you will permit me to request your attention to his opinion in cases where no obscurity exists. He says, 'The first general maxim of interpretation is that *it is not allowable to interpret what has no need of interpretation.* When a deed is worded in clear and precise terms; when its meaning is evident, and leads to no absurd conclusion, there can be no reason for refusing to admit the meaning which such deed naturally presents. To go elsewhere in search of conjectures in order to restrict or extend it, is but an attempt to elude it.

If this dangerous method,' he says, 'be once admitted, there will be no deed which it will not render useless. However luminous each clause may be, however clear and precise the terms in which the deed is couched, all this will be of no avail if it be allowed to go in quest of extraneous arguments to prove that it is not to be understood in the sense which it naturally presents.'

"I maintain that the treaty in the matter of the channel separating the continent from Vancouver's Island is worded in 'clear and precise terms,' and, therefore, I cannot admit any evidence on this subject to weigh with me that would lead to an interpretation that the precise terms of the treaty will not admit.

"5. You state that 'with the *projet* of the treaty and the chart before them, Mr. McLane and Lord Aberdeen could not fail to see at a glance that the concise language of the treaty clearly indicated the channel which separates the continent from Vancouver's Island. The Gulf of Georgia washing the continent at the northern end of the line, the Canal de Haro, Vancouver's Island at the southern end, and at its junction with the Straits of Fuca, presented to the eye a continuous channel that unmistakably separated throughout its whole length the continent from Vancouver's Island;' and, further, that 'a glance at the chart of the United States Coast Survey on a large scale, accurately defining the space through which the boundary line is to be traced, will show much more forcibly how well the language of the treaty was chosen to express in few words the object of the negotiators.' If the western shore of the Island of San Juan were the shore of the continent, or if no navigable channel existed between the Canal de Haro and the continent, I could agree with you in the conclusion at which you arrive. But as the western shore of the Island of San Juan is not the shore of the continent, and as there is *another navigable channel*, situated *more adjacent to the continent*, the existence of which your conclusion would ignore, I must respectfully submit that your conclusion can hardly be a correct one. I would ask, in what relation does

the Rosario Strait stand with regard to the continent? The mode of reasoning you have here adopted would lead to the direct inference either that no other channel existed than the Canal de Haro, or if any other channel did exist, that it had neither an entrance to it from the Gulf of Georgia, nor an exit from it to the Straits of Fuca. I would observe that the maps in use at the time the treaty was negotiated were on a very small scale, and, with every deference to your opinion, I must maintain that a glance at *them* will show a '*continuous channel*' from the Gulf of Georgia to the Straits of Fuca to be through the channel now called the Rosario Strait, rather than through the Canal de Arro. On Vancouver's map, which is no doubt one of those used at the time, the 'continuous channel' is very apparent, for the track of his ship is distinctly traced through the channel now called the Rosario Strait. But any map, whether on a large or a small scale, will, I conceive, clearly exhibit the Rosario Strait as an uninterrupted channel from the Gulf of Georgia to the Straits of Fuca, while to follow the course from the middle of the Gulf of Georgia to the Canal de Haro, it becomes necessary to proceed nearly at right angles; and, as I have already stated, local experience and observation of the currents will show that the Rosario Strait is a direct continuation of the Gulf of Georgia, while the Canal de Haro is more properly a continuation of the channel between Saturna Island and Vancouver's Island.

"6. You comment upon my reply to your remarks with regard to the term 'southerly,' and you observe that it is 'not entirely just' to apply the term strictly in one case and not in another. I must therefore repeat that I conceive when the words of a treaty *can* be carried out in their strict and literal sense, there can be no question as to their interpretation; when they *cannot* be so carried out, the evident intention of the treaty should be followed. In my former communication I did not refer to Vattel upon this head, for I considered it superfluous, and only unnecessarily adding to the length of my letter, but as you again notice it, and denominate my

view as 'not entirely just,' I must request your attention to paragraph No. 281, Book II., Chap. xvii., in which Vattel declares that it is not necessary to give a term the same sense everywhere in the same deed. He says:—

"'*If any one of those expressions which are susceptible of different significations occurs more than once in the same piece, we cannot make it a rule to take it everywhere in the same signification.*'

"In the following paragraph he says:—

"'*Every interpretation that leads to an absurdity ought to be rejected;* or, in other words, we should not give to any piece a meaning from which any absurd consequences would follow, but must interpret it in such a manner as to avoid absurdity.'

"Now the boundary line can be carried in closer adherence to a 'southerly' direction through the Rosario Strait than it can if taken through the Canal de Haro, and for this reason I argued that, so far as this particular was concerned, the Rosario Strait should be adopted in preference to the Canal de Haro; but the boundary line *cannot* be carried in a 'southerly' direction through the Straits of Fuca to the Pacific Ocean, and here is a trifling obscurity. It is, however, unnecessary to go beyond the treaty itself for an interpretation. Two points are named, the Pacific Ocean and the Straits of Fuca, and the former is to be reached through the latter; and as there is no doubt as to the position and limits of either, there can be no question as to what was the evident intention of the treaty-makers, and I must respectfully submit that such an interpretation, so strictly in accordance with the rules laid down by Vattel, and with the dictates of common sense, can neither be styled as 'not entirely just,' nor such as would render the treaty 'a nullity.'

"7. With reference to your remarks upon the map drawn by 'Charles Preuss, under the order of the Senate of the United States,' I must still observe that the map is an official document, published under high authority, and is indisputable evidence that the Canal de Haro could not have been the *only* channel regarded in the United States as the channel of the

treaty. The trifling inaccuracies you point out with regard to the line touching Sinclair and Cypress Islands, or any other trifling inaccuracies, do not weaken the fact that the line *does not pass through the Canal de Haro.* It is sufficiently clear that it was intended to trace the boundary line through the channel contiguous to the continent, and a glance at the map represents the line as a very natural boundary. I beg you to understand me, however, that I do not bring this map forward as any *authority* for the line of boundary. That authority is to be sought in the treaty alone, but I merely produce this map as a counter evidence to what you have advanced as to the Canal de Haro being the channel of the treaty. Both this map, dated in 1848, and the diagram, to which I before alluded, of a portion of Oregon Territory, drawn in 1852, are official documents, and are, therefore, entitled to some weight. The map to which you refer, drawn by J. Arrowsmith in 1849, is the publication of a private individual, and, therefore, cannot be produced against an official document, even were the boundary line upon it carried through the Canal de Haro ; but I append hereto the copy of a letter from Mr. Arrowsmith, in which he declares that there were no boundary lines upon his map until 1853, when he copied the line from Mr. Preuss's map. You remark that, had Mr. Preston seen the map of Arrowsmith of 1849, he would no doubt have drawn the line of boundary on the diagram of Oregon Territory as passing through the Canal de Haro. I can scarcely conceive that a Government official, in preparing an official document, would seek his information from the publications of a private individual; although it was very natural that Mr. Arrowsmith, as a private individual, should be guided in his delineation of the boundary line by an official document, published under the order of the Senate. I have Mr. Arrowsmith's map of 1853 in my possession, and will lay it before you should you desire to see it; but, of course, I do not refer to it as any authority, nor should I have brought forward either it or his letter had you not endeavoured to bring his map of 1849 as a document to be placed in opposition to the diagram of Mr. Preston.

"8. Having thus endeavoured to show you that all the arguments you have advanced can, to my mind, be fully rebutted, and that, therefore, they entirely fail in convincing me that the Canal de Haro can in any way be regarded as the channel of the treaty, I must again repeat my positive conviction that when two or more channels exist between a continent and an island, that channel which is *contiguous to the continent* must be the channel which separates the *continent from the island*, and that, therefore, the Rosario Strait, as being the navigable channel most adjacent to the continent, must be the channel which, at its position, '*separates the continent from Vancouver's Island*,' and consequently that it must be the channel through which the boundary line should pass. While my opinion is thus firmly fixed upon the Rosario Strait as the channel of the treaty, your opinion appears no less firmly fixed upon the Canal de Haro; and, therefore, so long as we both hold to these opinions, the prospect is very remote that we shall ever attain the end for which we were both commissioned. Eleven years have passed since the treaty of the 15th June, 1846, was signed and ratified. At the time of its conclusion the interests of British subjects and of American citizens around this neighbourhood were comparatively unimportant, and the settlement of the boundary line between the continent and Vancouver's Island was not urgently required; but now, with the greater interests involved, and with the fast increasing population and settlement of the country, it becomes a matter of grave importance that the boundary line should be defined. I am aware that Her Majesty's Government are desirous to have the line determined, and I have no doubt the Government of the United States are equally interested in the matter. It, therefore, I conceive, becomes our positive as well as our conscientious duty to endeavour, in a conciliatory spirit, and by mutual concession, to settle the matter. I will at once frankly state how far I am willing to concede, but *beyond what I now offer I can no further go.* In contemplating your view that all the channels between the continent and Vancouver's Island, from the termination of the

Gulf of Georgia to the eastern termination of the Straits of Fuca, are but a continuation of the channel of the Gulf of Georgia, I see a way by which I can in part meet your views without any gross violation of the terms of the treaty. I am willing to regard the space above described *as one channel*, having so many different passages through it, and I will agree to a boundary line being run *through the 'middle' of it*, in so far as islands will permit. In making this concession, which is the only approach to your views that I can possibly entertain, I beg it may be distinctly understood that I am induced thereto by no change of opinion on any one point, but that I am alone influenced by the considerations I have above given, and by an earnest desire to prevent a disagreement between us, and a reference of the matter to our respective Governments; and I further beg it may also be distinctly understood that I make the present offer without committing either my Government or myself, or any other person, to a renewal of it at any subsequent period, should it not now be accepted; but I feel confident that the liberal and conciliatory spirit which has actuated me on the present occasion will not fail to meet with the same ready response from you that hitherto it has been my privilege and pleasure always to experience in all the intercourse we have had.

"With every assurance of my high esteem and deep consideration, I have the honour to subscribe myself, sir, your very obedient and humble servant,

"JAMES C. PREVOST,

"Captain of H.B.M. ship *Satellite*, and Her Majesty's
"First Commissioner for the before-mentioned Boundary.

"Archibald Campbell, Esq.,

"Commissioner on the part of the United States for deter-
"mining the North-west Boundary Line."

Captain Prevost at the same time enclosed a copy of a letter from Mr. John Arrowsmith to the Secretary of the Hudson's Bay Company, dated 10,

Soho Square, September 29, 1856, which was as follows :(1)—

"Sir,—In your letter of the 22nd instant, having reference to the boundary line between this country and the United States boundaries in the Gulf of Georgia and De Fuca Straits, you say that Mr. Isaac I. Stevens, Governor of Washington Territory, United States, writing to the Governor of Vancouver's Island in May last, states that I published a map of Vancouver's Island and the adjacent coast on the 11th April, 1849, in which the boundary line between the two States is laid down as running through the Canal de Arro; and that the Governor and Committee of the Hudson's Bay Company will feel obliged by my informing them if such map was published by me, and if so, by what authority I was guided when thus marking the boundary.

"My reply is, that I published the map of Vancouver's Island and the adjacent coast, which was compiled from the surveys of Vancouver, Kellett, Simpson, Galliano, Valdez, &c. &c., on the 11th April, 1849, but that the map at that time contained no boundary lines whatever, and that it continued so until the end of 1852, when I engraved the boundary line as it now exists upon the plate, and I published the map with the date 1853.

"The authority which guided me in introducing the engraved boundary line, was a map emanating from the Senate of the United States, dated Washington City, 1848, the full title of which is, 'Map of Oregon and Upper California, from the Surveys of John Charles Frémont and other authorities, drawn by Charles Preuss, under the order of the Senate of the United States, Washington City, 1848. Scale, 1:300,000. Lith., G. E. Weber & Co., Baltimore.'

"In transferring the boundary line from the above map to my own plate, the only change which I made in drawing the boundary line was, that instead of carrying it to the islands of Sinclair and Cypress, as marked in the Senate map, I

(1) American State Papers, p. 35.

traced it between them, giving the former to the United States Government, and the latter to the British Government, for the same reason—viz., that it is situated nearest to the shores of Vancouver's Island,(1) conceiving it to be the common sense simplification of what might possibly, hereafter, cause misunderstanding if left undefined as regards these two islands. These were my authorities and reasons for the boundary line as represented in my map.

"When the treaty of 1846 was concluded, that neither the British nor the United States Government contemplated the extension through the Canal de Haro is quite clear. The United States Senate maps clearly settle this point, so far as that State is concerned.

"I have quoted the United States Senate map of 1848, and shown what use I make of it. I will now quote another Senate map, as confirmatory of that of 1848; this latter bears date October 21, 1852. The full title of the map is, 'A Diagram of a Portion of Oregon Territory. Surveyor-General's Office, Oregon City, October 21, 1852. John B. Preston, Surveyor-General. Scale, ten miles to an inch. Explanations: Townships subdivided, 1852, °; Townships proposed to be surveyed, 1853, +; Townships proposed to be surveyed, 1854, ∧.'

"The above survey, mapped and printed, extends from 42° to 49° north latitude, and from 120° 10′ to about 124° 35′ west longitude. It, of course, takes in the south portion of the Gulf of Georgia, Vancouver's Strait, and De Fuca Strait. This Government map confirms that of 1848, and brings the date down to 1852, 21st October. The line of boundary upon this map precisely corresponds with the former map.

"From the line drawn upon both these maps, it is manifest what the United States Government meant in 1846 as the continuation of the line of boundary; and it is clear that Government held the same view in the latter end of 1852.

"I have, &c., "JOHN ARROWSMITH."

(1) The two islands in question are upon my map placed in the relative position according to the United States Nautical Survey of 1841.

The United States Commissioner replied to Captain Prevost's arguments in the following letter :(1)

"United States North-west Boundary Commission.

"Camp Simiahmoo, 49th parallel, November, 28, 1857.

"Sir,—I have the honour to acknowledge the receipt of your letter of the 24th instant. Although my letter of the 18th instant was necessarily, to a considerable extent, a recapitulation of the views I had previously expressed (being a reply to your objections to those views), it was mainly devoted to the discussion of points and arguments contained in your letter of the 9th instant not before advanced by you. There was one point in your letter, however, to which I did not reply, but as you reiterate it in your last letter, I will now answer.

"You say, 'I must again respectfully submit to you that neither the correspondence of Mr. McLane, nor the speech of Mr. Benton, can in any way alter the actual wording and terms of the treaty. Their opinion, however valuable it may be, cannot divert the words of the treaty to an interpretation which I conscientiously maintain they literally will not admit.'

"You thus characterise the official report of Mr. McLane, and the speech of Mr. Benton, as mere *opinions*. As well might you call the articles of the treaty itself the opinions of those who signed, ratified, exchanged, and proclaimed it, and thus cast a doubt upon its authenticity.

"Mr. McLane, in his character of special ambassador to England, reports to his Government the result of an official conference held with the Secretary of State for Foreign Affairs, 'at the Foreign Office,' and gives the substance of a proposition to be submitted to the United States by the British Government. This report was transmitted to the Senate side by side with the proposition of the British Government, and was the guide to that body in giving their advice to the President to accept the proposition. It is a report of facts in relation to

(1) American State Papers, p. 36.

the proposition, and stands as the record of the intention of the British Government, as well as of the understanding of the United States Government.

"Mr. Benton's speech is an incontrovertible record of his understanding and intention, as one of the treaty-making power, in advising the acceptance of the proposition and consenting to the ratification of the treaty. He does not describe the boundary line as a matter of opinion. He states what he *knows*, not simply what he believes, to be the meaning of the language in regard to it. He had full and free access to those who could enlighten him as to the *intention* of the two Governments, and there is no doubt that he availed himself of his privilege.

"As you still maintain that the wording of the treaty is very peculiar, I beg, respectfully, to call your attention to the language of your own Government in 1848, in the draught of instructions prepared for the commissioners, who, it was then supposed, might be appointed to determine the boundary line. (1) A copy of the said draught will be found accompanying Mr. Crampton's letter of January 13, 1848, to which I called your attention in my first letter. Mr. Crampton says:—

"'In bringing this matter under the consideration of the Government of the United States, I am directed to present to you a copy of the proposed draught of instructions to the commissioners to be so appointed, which I have the honour herewith to enclose.'

"After quoting the first article of the treaty, and describing the first operation deemed necessary to be performed by the commissioners, the proposed instructions proceed as follows:—

"'From that point you will carry on the line of boundary along the forty-ninth parallel of latitude to the *middle of the channel between Vancouver's Island and the continent.*'

"Although, as I have already stated, I attach no special importance to the arrangement of the words, and in this view

(1) An extract from this letter has been given above, p. 45. Also a copy of the draught instructions, p. 48.

am supported by high authority, I deem it proper to enforce my opinion by also exhibiting that of the British Government in 1848, within two years after the conclusion of the treaty.

"I have heretofore quoted from Mr. Crampton's letter several detached passages, to show that the British Government, in January, 1848, did not pretend to assert a positive claim to Rosario Straits as the boundary channel, and did not present any *evidence* of the intention of the treaty-makers in relation to it; and also that they deemed an interpretation of the meaning of the language of the treaty to be necessary. As there are other points in that letter bearing upon the question now before us, as a matter of convenience I herewith annex a copy of so much of it as has special reference to the water boundary line. By a comparison of the views of the British Government, as therein expressed, with those advanced at the present time by your Government and yourself, it will be seen that there is a striking difference between them.

"In 1848, Rosario Straits was not claimed on the ground that there was anything peculiar in the wording of the treaty; nor was there any claim founded upon the supposition of a 'designed alteration' of the original *projet* of the treaty, by omitting the 'Canal de Haro,' and substituting its present language.

"All that the British Government then advanced in behalf of Vancouver or Rosario Strait was their *belief* that it was intended as 'the channel' of the treaty, because it was thought to be the only one in that part of the gulf which had been 'hitherto surveyed and used,' and that therefore it seemed 'natural to suppose that the negotiators of the Oregon Convention, in employing the word "channel," had that particular channel in view.' In my letter of the 2nd instant I showed the error of Mr. Crampton's assumption that it was the only channel that had been hitherto 'surveyed and used.' Besides the Spanish navigators in early times, Captain Wilkes, in 1841, while in command of the Exploring Expedition, surveyed the Canal de Haro, Rosario Straits, and the intermediate islands and channels.

"But even while making the effort to induce the United States Government to adopt that channel, the British Government frankly acknowledged the necessity of an interpretation of the treaty. Mr. Crampton refers to the Principal Secretary of State for Foreign Affairs as the official authority from whom he received his instructions. Whether the person then holding the position of Principal Secretary of State had any connection with the negotiation of the treaty I am unable to say, but, as it was shortly after the conclusion of the treaty, it is presumed that he must have been, at least, as fully informed upon the subject as any who have succeeded him. And the absence of any evidence then that the Rosario or Vancouver Straits was intended or proposed, proves clearly that none was in existence. Under these circumstances, it can hardly be expected of me to attach much importance to the intimation of the Earl of Clarendon, unaccompanied by any evidence of the fact, that Rosario Straits was 'the channel' contemplated by the British Government, or to change my views on your presumption that his intimation was based on substantial grounds.

"In opposition to your opinion that the words of the treaty are so peculiarly precise and clear as to point out unmistakably Rosario Straits as 'the channel,' Mr. Crampton, speaking on the part of his Government, says :—

"'But between the Gulf of Georgia and the Straits of Fuca the line is *less distinctly* and *accurately defined* by the *verbal description* of the treaty by which it is established,' &c.

"And here allow me to quote a general maxim from Vattel, which is peculiarly applicable to the position of the British Government in relation to their present claim that Rosario Straits was meant as 'the channel' of the treaty :—

"'If he who can and ought to have explained himself clearly and plainly has not done it, it is the worse for him ; he cannot be allowed to introduce subsequent restrictions which he has not expressed.'

"He adds :—

"'The equity of this rule is extremely visible, and its

necessity is not less evident. There can be no secure conventions, no firm and solid concession, if these might be rendered vain by subsequent limitations that ought to have been mentioned in the piece if they were included in the intentions of the contracting powers.'

"The proposition or *projet* of the treaty having been drawn up and submitted by the British Government to the United States, the rule excludes, therefore, all claim to Rosario Straits, without the most indisputable proof, of which I have yet to see the first evidence.

"Notwithstanding your objection to my argument in favour of the Canal de Haro, as the channel of the treaty, on the ground that the continent embraces the islands adjacent to it as far as the Canal de Haro, I maintain that my view is correct and according to well-established principles of international law; for in order to define a channel we must know the coasts which bound it. The Canal de Haro on one side is bounded by the coast of Vancouver's Island, on the other by the coast of the nearest islands, which are natural appendages to the continent. For the correctness of this position I would respectfully refer you to Wheaton's 'Elements of International Law,' pp. 233–4, my copy of which is at your disposal.

"Your objection to the Canal de Haro on the ground that there is *another navigable channel situated more adjacent to the continent*, the existence of which, you say, my conclusion in favour of the Canal de Haro would ignore, will apply equally to Rosario Straits. For there are, undoubtedly, channels nearer to the continent than Rosario Straits—viz., Bellingham Channel and the channel between Lummi Island and the mainland; the former being the very one through which Mr. Arrowsmith drew the boundary line. I am aware that the other channel is narrow; still, it is navigable, and cannot be objected to on the ground that it is not, and it certainly, as well as Bellingham Channel, is closer to the mainland than Rosario Straits; and these two channels combined would possess more completely the characteristics required by you for 'the channel' of the treaty than Rosario Straits. In

answer, therefore, to your inquiry, 'In what relation does the Rosario Strait stand with regard to the continent?' I would respectfully state that, in my opinion, it stands in the same relation to it as the San Juan Channel, or any other channel, between the two just alluded to and the Canal de Haro.

"Your quotation from Vattel, that it is not necessary to give a term the same sense everywhere in the same deed, is quite inapplicable to the use of the word 'southerly' in the treaty; for that word only occurs *once*, whereas the rule referred to is where expressions which are susceptible of different signification occur '*more than once* in the same piece.'

"Your further quotation, 'that every interpretation that leads to an absurdity ought to be rejected,' must, therefore, necessarily apply to the strictly technical meaning you attach to the words.

"The 'trifling inaccuracies' in the map of Charles Preuss, to which you allude, were not pointed out by me at all with the view of strengthening my position as regards the Canal de Haro, but simply to show that, in drawing *boundary lines*, he did so on his own authority, and was neither guided by the treaty nor the treaty-makers. You say you do not bring forward this map 'as any authority for the line of boundary,' but merely 'as a *counter evidence* to what you [I] have advanced as to the Canal de Haro being the channel of the treaty.'

"You add, both this map, dated in 1848, and the diagram of Surveyor-General Preston, drawn in 1852, 'are official documents, and are therefore entitled to some weight.'

"Considering the summary manner in which you have disposed of the evidence of Mr. McLane and Mr. Benton, I am somewhat surprised that you should attach any weight to these maps, particularly after the proof I have given you of their inaccuracy and want of authority in regard to boundary lines. Since, however, you regard them as entitled to some weight, I would respectfully call your attention to the map of the Surveyor-General of Washington Territory for 1856,

published during the present year by the same authority as the map of Mr. Preston. Upon this map the boundary line is drawn from the forty-ninth parallel through the Gulf of Georgia, the Canal de Haro, and the Straits of Fuca, to the Pacific Ocean. Doubtless the present able surveyor-general, Mr. Tilton, has carefully studied the language and terms of the treaty, and has interpreted its meaning therefrom, without any special knowledge of the actual intentions of its authors.

"I have read Mr. Arrowsmith's letter to the secretary of the Hudson's Bay Company, appended to your letter, and am struck with his ingenuity in avoiding the direct question put to him as to the authority by which he was guided in marking the boundary line. Mr. Arrowsmith gives carefully the date of the publication of the map, but adds that, at that time, it contained no boundary line whatever, and that it continued without one until 1852, when he engraved the boundary line as it now stands upon the plate, and published it in 1853. He gives, as his authority for introducing the engraved boundary line, the map of Preuss, published in Washington City in 1848. He then states the reasons why he deviated from the line as laid down by Preuss, giving the larger island to Great Britain and the smaller to the United States, for reasons satisfactory to himself. The diagram of Mr. Preston was considered by Mr. Arrowsmith as confirmatory of that of Mr. Preuss, and as showing the views of the United States Government down to October, 1852.

"I was well aware of the estimation in which Mr. Arrowsmith was held, in England and elsewhere, as an accurate collector, compiler, and publisher of maps; and the inquiry of the Hudson's Bay Company, and the production of his reply at this time, confirms my opinion.

"I would now respectfully call your attention to the fact that, in the map of 1849, the boundary line of the forty-ninth parallel is drawn and coloured, and, although no boundary *line* is laid down between Vancouver's Island and the territories of the United States, the whole *boundary channel*, from the forty-ninth parallel to the Pacific Ocean, is so distinctly

portrayed, by colouring differently the coast of Vancouver's Island and the adjacent coasts of the United States, that it is a mere quibble on his part to say that the map contains 'no boundary line whatever.' While he carefully avoids giving the authority for marking thus distinctly the boundary channel, he is critically minute in giving his authority for engraving the line in 1852, and his reasons for dividing the islands of Cypress and Sinclair between the two territories. He does not, however, attempt to explain why he postponed the introduction of the engraved boundary line until 1852, and its publication until 1853. Mr. Preuss's map was published and given forth to the world in June, 1848. Certainly, so eminent a collector of maps as Mr. Arrowsmith could not have failed, before the close of 1852, to obtain possession of a map published in the city of Washington, by order of the United States Senate. If he had it, as it is to be presumed, he evidently regarded it as of no authority until about that period.

"It is to be presumed that, when Mr. Arrowsmith receives the map of Surveyor-General Tilton for 1856, his original impression as to the channel of the treaty will be confirmed, and that he will restore the boundary channel to his map, as in 1849, with the addition of the line from the forty-ninth parallel to the Pacific Ocean.

"If I have not failed entirely in my object, I think you must be satisfied, from the correspondence which has resulted from your letter of the 28th ultimo, that the views I have maintained in regard to the channel are too firmly fixed to admit of my agreeing to any arrangement for defining the boundary line which would divert it from the Canal de Haro. It has been my earnest endeavour to satisfy you of the force and justice of my convictions, by an unreserved exhibition of the evidence upon which I relied to sustain my reading of the treaty. If I have failed in my expectations, the effort has at least given me additional confirmation of the correctness of my views. The evidence I have produced remains uncontroverted and incontrovertible. On the other hand, no argu-

ment has been advanced or evidence adduced in favour of Rosario Straits that has not, to my mind, been satisfactorily refuted or invalidated.

"I agree with you in the importance of an early determination and settlement of the boundary line, but much as I should regret any delay in consequence of a disagreement between us, I must frankly, but respectfully, decline accepting any proposition which would require me to sacrifice any portion of the territory which I believe the treaty gives to the United States; and in doing so allow me to say that there is not the slightest probability that your Government, yourself, or any other person, will ever be called upon for a renewal of the proposition contained in your letter of the 24th instant.

"Fully appreciating the liberal and conciliatory spirit which actuates you on the present occasion, I can reciprocate cheerfully your kind expressions in relation to our past intercourse, both personal and official.

"With the highest regard and most perfect esteem, I have the honour to be, most respectfully and sincerely, your obedient servant,

"ARCHIBALD CAMPBELL,
"Commissioner on the part of the United States for
"determining the North-west Boundary Line.

"Captain James C. Prevost,
"First British Commissioner North-west Boundary
"Survey, &c."

Captain Prevost replied as follows :(1)—

"Her Britannic Majesty's Ship *Satellite*, Simiahmoo Bay,
"Gulf of Georgia, December 1, 1857.

"SIR,—I have the honour to acknowledge the receipt of your letter of the 28th ultimo, in which you decline to agree to the proposal I made in my letter of the 24th ultimo with a view to our being able ourselves to determine the water boundary line between the possessions of Her Britannic

(1) American State Papers, p. 44.

Majesty and those of the United States, as settled in the first article of the treaty of 15th June, 1846.

"2. Could I regard the correspondence of Mr. McLane and the speech of Mr. Benton as of greater weight than the treaty itself, I should probably, in the absence of direct contradictory evidence of equal value, respond to your view that the boundary line should pass through the Canal de Haro; but, *taking the treaty alone as my authority*, and with its words plainly and unmistakably before me, I could never conscientiously admit that the Canal de Haro is a channel which intrinsically answers to the channel described in that treaty. In that treaty I find two fixed points named—the continent on one hand and Vancouver's Island on the other, and it is agreed that the boundary line is to run through the middle of the channel separating the former from the latter. In this case, in my opinion, the continent is *de facto the continent*, as much as the island is *de facto the island;* and holding this view, I conceive that no interpretation of the treaty *per se* can admit of the Canal de Haro being regarded as the channel through which the boundary line should pass. It appears to me that the claim to this channel *rests entirely* on the correspondence of Mr. McLane and the speech of Mr. Benton. If upon this ground the Canal de Haro be admitted as the channel of the treaty, with equal justness it might be argued that the line along the forty-ninth parallel should not strike the water at the *forty-ninth parallel*, but that it should *deflect to Birch's Bay*, which is a few miles to the southward; for Mr. McLane, in his letter of the 18th May, 1846, states that the offer will probably be 'to divide the territory by the extension of the line on the parallel of forty-nine to the sea—*that is to say, to the arm of the sea called Birch's Bay*—thence by the Canal de Haro and Straits of Fuca to the ocean;' but I find no mention of *Birch's Bay* in the treaty, any more than I do of the *Canal de Haro;* and as the words of the treaty are as distinct upon the one head as they are upon the other, I cannot admit that they should be departed from, either to carry the boundary line through the Canal de Haro, or to deflect it from

the forty-ninth parallel to Birch's Bay. I conceive that the correspondence of Mr. McLane and the speech of Mr. Benton, and the concurrent proceedings in the Senate of the United States, must be viewed in connection with the *whole Oregon question* as agitated at the time, and not merely with reference to the small portion of that question which is comprised in the determination of the line of boundary between the continent and Vancouver's Island. I have received the whole of this evidence with the greatest respect, and I have given to it the most careful and anxious study and reflection, but I cannot admit it as otherwise than *secondary* to the treaty. While upon this point, I would respectfully submit to you that if the treaty was intended by the United States Government to accord with the correspondence of Mr. McLane and the speech of Mr. Benton, I conceive that the general maxim you have quoted from Vattel would be more applicable to the United States than to the British Government, for if the former intended that the Canal de Haro should be the channel through which the boundary line was to pass, they should have taken care that it was so expressed 'clearly and plainly' in the treaty. That it was never either the proposition or in the contemplation of the British Government, every further reflection I give to the subject only the more firmly convinces me.

"3. Notwithstanding the construction you are pleased to put upon the quotation I used from Vattel to show that it was not necessary to give a term everywhere the same signification in the same deed, I must, with the utmost deference, still maintain that it is strictly to the point for which I quoted it; and I think further reflection on your part will show you that the objection because the term occurs *only* '*once*,' whereas the rule applies to words which 'occur *more than once*,' is but a mere play upon words; the whole spirit of the paragraph in Vattel being so evident. The word 'southerly,' in reference to which the quotation was made, although only *once printed*, is *applied twice*, and, therefore, is in the same category as if it were used twice; for although the actual

words of the treaty are 'and thence southerly, through the middle of the said channel and of Fuca's Straits to the Pacific Ocean,' yet you would apply the words as if they were written, and thence southerly through the middle of the said channel, *and thence southerly through the middle* of Fuca's Straits to the Pacific Ocean. Although I do not for one moment suppose that the word southerly was intended by the treaty-makers to apply to Fuca Straits at all, yet you have thought fit to so interpret it, and I do not dispute that, viewing the construction of the passage in which it occurs in a strictly grammatical sense, such an interpretation may be given to it. The further quotation I used from Vattel is also, I conceive, strictly applicable; for no 'absurdity' follows the strict use of the term 'southerly' in connection with Rosario Strait, although it does if the term be similarly used in reference to the boundary line reaching the Pacific Ocean through the Straits of Fuca.

"4. In your letter of the 18th ultimo, in alluding to a continuous channel from the Gulf of Georgia to the Straits of Fuca, you state, 'But whatever name may have been given to the waters broken up by the islands' (between the continent and Vancouver's Island), '*they are all continuations* of the waters proceeding from the Straits of Fuca or Gulf of Georgia, and *are all perfectly on an equality* in that respect;' and again, 'it has been acknowledged that Rosario Strait, in *common with the other channels is a continuation of the Gulf of Georgia.*' After stating this as your conviction and opinion, it is difficult for me to conceive how you can reconcile the claim to trace the boundary line *through the middle* of the *Canal de Haro* with a strict adherence to the terms of the treaty, 'taking the words in the most literal sense.' Surely, if all the channels between the continent and Vancouver's Island, from the southern termination of the Gulf of Georgia to the eastern termination of the Straits of Fuca, are a continuation of the channel called the Gulf of Georgia, it must necessarily follow that they are collectively *part of that channel*, and consequently the '*said channel*' of the treaty, through the

'*middle*' *of which* the line of boundary should be carried to accord with the terms of the treaty. Although I do not admit the correctness of your view with regard to *all the channels* in the position before described forming a continuation of the channel of the Gulf of Georgia, yet it was this statement of your view that induced me to make the proposition I did, with the sincere hope that we might ourselves come to an arrangement of the matter; and when I reflected upon this statement of yours, and when I voluntarily offered to recede from what I firmly and honestly believed was not only the intention of the British Government in employing the words used in the first article of the treaty, but also the true and literal interpretation of the words themselves; and when I offered to abandon what I most conscientiously and candidly conceived was the better claim of the two, solely in order that the matter might be settled at once and by ourselves, I think it was no unreasonable hope to indulge, and no over-confident expectation to entertain, that I should meet with the most ready response from you. That it has not been so, I can now only regret; and it is but for me now to propose that a conference be held whenever it may be convenient to you, in order that it may be formally recorded that we are unable to agree as to the direction of the boundary line, and that you decline to accede to my proposition for an amicable compromise, and that we therefore decide upon a reference of the whole matter to our respective Governments.

"With the utmost consideration and esteem, I beg to subscribe myself, sir, your most obedient humble servant,

"JAMES C. PREVOST,

"Captain H.B.M. Ship *Satellite*, and Her Majesty's First
"Commissioner for determining the aforesaid Boundary."

"Archibald Campbell, Esq.,
"U.S. Commissioner North-west Boundary, &c. &c."

To these arguments the United States Commissioner replied in the following letter, which, with the exception of a mere letter of acknowledgment from

Captain Prevost, closed the correspondence on this head :(1)—

"United States North-west Boundary Commission, Camp
"Simiahmoo, 49th parallel, December 2, 1857.

"SIR,—I have the honour to acknowledge the receipt of your letter of the 1st instant. In my previous letters I have distinctly stated that the Canal de Haro, in my opinion, is the channel intended by the treaty, taking it 'in the most literal sense consistent with its execution,' and I have given my reasons therefor. In like manner you have asserted that Rosario Straits is 'the channel' of the treaty, and given the grounds upon which your opinion is based.

"Finding, however, that we could not agree by confining ourselves to the mere words of the treaty, I laid before you contemporaneous evidence of the highest authority and most undoubted authenticity, in hopes that it would aid in settling the disputed question, and enable us to execute our instructions by carrying the treaty into effect. You did not decline to consider this evidence, but attempted to degrade its character by designating it as mere opinions, and to destroy its force by the production of what you were pleased to call '*counter evidence.*' But when you find its facts to be incontrovertible, and the counter evidence entitled to no credit, you again intrench yourself behind the mere words of the treaty, and refuse to 'admit any evidence whatever on the subject to weigh with' you 'that would *lead* to an interpretation that the *precise terms* of the treaty will not admit.'

"I also called your attention to the views of your own Government in 1848, within two years after the conclusion of the treaty, to prove that there was no evidence in existence that Rosario Straits was ever intended as 'the channel' of the treaty. With such evidence in favour of the Canal de Haro, and against the Rosario Strait, I think I had good reason to expect an acknowledgment on your part that you were mistaken in the views you first entertained.

(1) American State Papers, p. 46.

"You now say it appears to you that the claim that the Canal de Haro is 'the channel' '*rests entirely* on the correspondence of Mr. McLane and the speech of Mr. Benton.' If this be a fair construction of my position in regard to that channel, then the claim for Rosario Straits rests on no foundation whatever, for *your opinion*, equally with my own, is set aside by such a view of the case. Having shown heretofore that the evidence of Mr. McLane and Mr. Benton proves that the Canal de Haro was originally intended by the British Government, and that the intention remained unchanged, I am not unwilling to let the question rest *entirely* upon their evidence for the present. When any substantial cotemporaneous counter evidence is produced, it will then be time enough to bring forward more if necessary.

"I do not deem it necessary to enter into any argument to show the fallacy of your inference that if the Canal de Haro be admitted as 'the channel,' with equal justness it might be argued that 'the line along the forty-ninth parallel should not strike the water at the *forty-ninth parallel*, but that it should *deflect to Birch's Bay.*' A glance at Vancouver's chart, or at Wilkes's map of the Oregon Territory, will show why that 'arm of the sea' was named by Mr. McLane in giving the substance of the proposition of the British Government, and also why it was not introduced into the treaty.

"Your remark as to the applicability of the general maxim of Vattel (quoted by me) to the United States, rather than to the British Government, might have some force if the proposition had not emanated from the latter. The language chosen to convey their intention could not be objected to by the former, unless it failed to express that intention clearly. That it was fully understood I have heretofore shown.

"In recognising and admitting the fact that the various channels between the continent and Vancouver's Island are directly or indirectly connected with the Straits of Fuca or Gulf of Georgia, I do not see any conflict with the claim I have made, that the boundary line should be traced *through the middle* of the *Canal de Haro* in strict adherence to the

terms of the treaty; for, even if according to your proposition all the space referred to should be considered *one channel*, it would be impossible to run a line 'through the middle of the said channel' in strict accordance with the terms of the treaty, without coming in contact with islands. But following the precedents in like cases where there are several channels, it would make no difference in the result, for the *main channel* would have to be adopted, and, consequently, the Canal de Haro would still be the channel of the treaty.

"From the conclusion of your letter it might appear as if I had disappointed a reasonable expectation on your part that I would respond to your proposition for a mutual concession. Considering the powerful evidence I have brought forward to sustain my opinion that the Canal de Haro is 'the channel,' against your opinion alone, unaccompanied by a particle of evidence to sustain it, I am at a loss to understand upon what ground you could have expected me to yield one inch of the line I have claimed, and proved to be the true boundary intended by the treaty. I must candidly confess that I think any proposition with a view to concession on the part of the United States was hardly justifiable under the circumstances.

"With the highest regard and esteem, I have the honour to be, very respectfully, your obedient servant,

"ARCHIBALD CAMPBELL,
"Commissioner on the part of the United States for
"determining the North-west Boundary Line.

"Captain James C. Prevost, R.N.,
"H.B.M. First Commissioner N.W. Boundary."

The sixth meeting of the Commission was held on the 3rd day of December, 1857, at the camp of the United States North-western Boundary Commission, Simiahmoo Bay, Gulf of Georgia.

Captain Prevost,[1] Her Majesty's first Commissioner, stated that he had duly received and atten-

[1] American State Papers, p. 49.

tively considered all Mr. Campbell's correspondence upon the subject of "the channel," through which the boundary line was to pass according to the treaty, and that he was unable to admit that the Canal de Haro, as claimed by Mr. Campbell, was a channel which would meet the requirements of the treaty, but on the contrary, that he considered the channel now called the Rosario Strait was the only one which would in all points answer to the channel described in the treaty. Such being the case, and Mr. Campbell remaining firm in his opinion as to the Canal de Haro being the channel through which the boundary line should pass, Captain Prevost had proposed that the disagreement should be settled by mutual compromise, which proposition Mr. Campbell declining to entertain, he begged now to submit that the whole matter and correspondence connected with the same should be referred by each to his Government.

Mr. Campbell, United States Commissioner, in reply, stated that he did not concur in the proposal as to the *reference* of the matter to the respective Governments, but that so far as he was concerned he should *report* proceedings to his Government, submitting at the same time all the correspondence upon the subject.

The Commissioners agreed to adjourn until circumstances should render their meeting again necessary; and accordingly the Commission adjourned.

A minute of these proceedings was drawn up and signed by the two Commissioners.

CHAPTER IX.

It would appear that the United States Commissioner inferred, from his failure to convince Captain Prevost that the Canal de Haro was the "channel" intended by the treaty, that the last-mentioned officer had been hampered by the instructions issued to him by Her Majesty's Government. In order to satisfy his mind with reference to the conclusion he had drawn, Mr. Campbell wrote, on the day after the last meeting of the Commission, the following letter to Captain Prevost :(1)—

"United States, N.W. Boundary Commission,
"Camp Simiahmoo, Dec. 4, 1857.

"Sir,—At our first official meeting on the 27th day of June last, after examining each other's instructions, it was mutually understood that we were equally invested with *full powers* for determining the boundary line between the United States and British possessions, from its intersection with the eastern shore of the Gulf of Georgia to the Pacific Ocean. It was upon that understanding that I have since acted in our conferences and correspondence. In our meeting of yesterday, however, it was stated by yourself or secretary that your instructions required you in case of disagreement to propose to refer the matter to our respective Governments. This statement, taken in connection with the whole tenor of your correspondence, and the paper submitted by you at our last meeting, has led me, upon further reflection, to apprehend that you were governed by instructions which virtually, if not

(1) American State Papers, p. 92.

positively, prohibited you from adopting the Canal de Haro as the boundary channel, without reference to your own judgment thereupon. I will, therefore, be obliged to you to inform me whether or not I am correct in this inference. Not having been furnished with a copy of your instructions, I am unable to come to a satisfactory conclusion upon the subject without calling upon you for the desired information.

"I need hardly say that my instructions left me entirely free to adopt that channel which should be found to correspond with the terms of the treaty and the intention of the treaty-makers. Having been furnished by your own Government with a copy of my instructions, you could not fail to perceive that I was not restricted or confined to any particular channel or channels.

"With the highest respect and consideration, I have the honour to subscribe myself your most obedient servant,

"ARCHIBALD CAMPBELL,
"Commissioner on the part of the United States for
"determining the North-west Boundary Line."

"Captain James C. Prevost, R.N.,
"British Commissioner North-west Boundary, &c. &c.

Captain Prevost replied as follows :(1)—

"Her Britannic Majesty's Ship *Satellite*,
"Esquimault, Vancouver's Island, Dec. 8, 1857.

"SIR,—I have the honour to acknowledge the receipt of your letter of the 4th instant, which came to hand at 2 P.M. of this day.

"2. In reply to your request for certain information as to the extent of my powers as Her Britannic Majesty's Commissioner for determining the water boundary line under the first article of the treaty between Great Britain and the United States of June 15, 1846, I beg to furnish you with an extract from Her Majesty's Commission, dated the 18th December, 1856, by which you will perceive that my powers as Her

(1) American State Papers, p. 93.

Majesty's First Commissioner for determining the aforesaid line of boundary are full and entire. This commission was exhibited to you at our first official meeting, when our respective powers were exchanged and found to be in due form.

"3. My commission constitutes me Her Majesty's 'First Commissioner for the purpose of surveying, ascertaining, and marking out, in conjunction with the Commissioner or Commissioners appointed or to be appointed by the President of the United States in that behalf, so much of the line of boundary hereinbefore described (referring to a quotation of the first article of the treaty) as is to be traced from the point where the forty-ninth parallel of north latitude strikes the eastern shore of the Gulf of Georgia;' and it declares, 'we do hereby give to our said Commissioner *full power and authority to do and perform all acts, matters, and things which may be necessary and proper for duly carrying into effect the object of this our commission.*'

"4. You state that the whole tenor of my correspondence and the paper submitted by me at our last meeting has led you upon further reflection to apprehend that I was governed by instructions which virtually, if not positively, prohibited me from adopting the Canal de Haro as the boundary channel without reference to my own judgment thereupon. The foregoing extract from Her Majesty's Commission will show you how erroneous such a supposition is. I mentioned at our last meeting that my instructions did point out a course I was to adopt in the event of disagreement. That instructions should be complete and should provide for all contingencies is no more than should be expected. I am directed, in the event of not being able to decide upon a channel upon which we (my colleague and I) may mutually agree, as the one through which the boundary line should run, to propose a reference of the matter to our respective Governments.

"5. I here beg again most emphatically to repeat what I respectfully conceive is sufficiently evidenced by my previous correspondence, that, with the full and unfettered exercise of my own judgment, I cannot admit that the Canal de

Haro can be received as a channel which intrinsically answers to the channel of the treaty, but that, on the contrary, it is my firm and most conscientious conviction, with the same unfettered exercise of judgment, that the channel called the Rosario Strait is the only one that does intrinsically answer to the channel described in the treaty, and that, therefore, the boundary line should be carried through that channel, if the words of the treaty be strictly and literally adhered to.

"6. This being my firm conviction, it is not likely that I could accede to your views that the boundary line should be carried through the Canal de Haro, and as you remained firm in your conviction that it should be carried through that channel, it was very evident that we were never likely to fulfil the duties for which we were commissioned so long as each adhered to his own opinion. Following out what appeared to me the only course left, and what seemed the clear path of duty if I wished to execute the trust reposed in me, I voluntarily offered to recede somewhat from my position, if you would do the same, and suggested that a line of boundary should be run about midway between the two disputed channels. This proposition you refused to entertain. I, therefore, had no alternative left me but to propose a reference of the whole matter to our respective Governments, which proposition I brought forward at our last meeting.

"7. Having thus, I trust, satisfactorily shown you that I have been hampered by no instructions which *deprived me in the slightest* of the full and entire exercise of my own judgment, I beg you will allow me to subscribe myself, with the highest esteem and consideration, your most obedient and humble servant,

"James C. Prevost,

"Her Britannic Majesty's First Commissioner for
"determining the before-mentioned Boundary Line.

"Archibald Campbell, Esq.,

"United States Commissioner North-west Boundary, &c."

Mr. Campbell rejoined in the following letter :(1) —

"United States North-west Boundary Commission,

"Fort Townshend, December 12, 1857.

"SIR,—I have the honour to acknowledge the receipt this day of your letter of the 8th instant, in reply to mine of the 4th instant.

"I regret that, instead of an extract from your commission, you did not furnish me with a full copy of that instrument, as well as of other instructions by which you were governed in the performance of your duty as Joint Commissioner for carrying into effect that part of the first article of the treaty which relates to the water boundary line between the United States and the British possessions. As I am desirous of being placed upon an equal footing with yourself as regards a full knowledge of the instructions severally given to us by our respective Governments, I would respectfully request that you transmit to me copies of all instructions which have had any bearing upon the course adopted by you in our official intercourse as Commissioner on the part of the British Government for the determination of the boundary line.

"If you desire it, I will cheerfully furnish you with a copy of my commission. You already have a copy of *all* the instructions I have received from my Government for the performance of my duty as Commissioner on the part of the United States.

"With the highest respect and consideration, I have the honour to be, very respectfully, your most obedient servant,

"ARCHIBALD CAMPBELL,

"Commissioner on the part of the United States for "determining the North-west Boundary Line.

"Captain James C. Prevost, R.N.,

"British Commissioner North-west Boundary, &c. &c."

(1) American State Papers, p. 94.

This was followed by another letter from Mr. Campbell to Captain Prevost, which was as follows :(1)

"United States North-west Boundary Commission,
"Fort Townshend, December 15, 1857.

"SIR,—In order that you may be fully informed as to the powers and instructions which have governed me in my action as Commissioner on the part of the United States to carry into effect the first article of the treaty of June 15, 1846, I have concluded, without further delay, to furnish you with a copy of my commission, and have the honour to transmit the same herewith.

"With the highest respect and consideration, I have the honour to be your most obedient servant,

"ARCHIBALD CAMPBELL,
"Commissioner on the part of the United States for
"determining the North-west Boundary Line.

"Captain James Prevost, R.N.,
"British Commissioner, North-west Boundary Survey."

The commission and instructions referred to in this letter have been already set out. It may be noticed that the instructions are thus described :(2)—

"Mr. Campbell's instructions, so far as they relate to the determination of the Boundary Line."

It is to be inferred that the statement furnished by Mr. Campbell to Captain Prevost is an extract from the documents addressed to him by his Government.

Captain Prevost, in answer, wrote the following letter, enclosing therewith a copy of his commission, and a copy of his first letter of instructions, which have been given above :(3)—

(1) American State Papers, p. 95. (2) *Idem*, p. 96.
(3) *Ante*, pp. 59, 61.

"Her Britannic Majesty's Ship *Satellite*, Esquimault, Vancouver's Island, December 22, 1857.(1)

"SIR,—I have the honour to acknowledge the receipt of your two letters, dated Fort Townshend, December 12th and December 15th.

"2. In reply to that of the former date, wherein you express your regret that I did not furnish you with a full copy of Her Majesty's commission, as well as of all other instructions by which I was governed in the performance of my duty as Joint Commissioner for carrying into effect that part of the first article of the treaty of 15th June, 1846, which relates to the water boundary between the United States and the British possessions, I must be permitted to express my regret—if not my surprise—that the very full and direct reply I made on the 8th instant to the inquiries contained in your letter of the 4th instant did not convey to you the meaning which I candidly, though most respectfully, conceive it ought to have done. Considering that at our first meeting our powers were mutually examined and found to be in due form and sufficient; considering that Her Majesty's commission was again placed in your hands, and again examined by you, when Captain Richards was introduced to you as Her Majesty's second commissioner; and considering the stage at which we had arrived in the duties assigned to us, I must say that when I received your letter of the 4th instant, it did appear to me to be somewhat out of order that you should, at this period, make a written application to me as to the nature of my powers, and should attempt to cast a doubt upon their scope being equal to your own, so far as the water boundary may be concerned. I, however, refrained from making any comment upon the act, but I readily and directly gave you the full information you asked for. In affording you that information I asserted, in the most straightforward and unmistakable manner, that I was governed by no instructions which would interfere with the full and entire exercise of my own judgment in the determination of the water boundary line, as established by the treaty. I

(1) American State Papers, p. 97.

repeated what is to be found constantly affirmed in all my previous correspondence, that I could never *conscientiously* agree to your views as to the Canal de Arro being the boundary channel, nor *conscientiously* admit that it was a channel which answered to the channel determined by the treaty. I know not in what more positive and satisfactory manner I could answer the question you put to me, and could show you that I have not been governed by any prohibitory instructions in my proceedings, and that I have been acting entirely on my own *conscientious convictions* and on my own *free judgment*. In your letter of the 4th instant you asked me a simple question as to whether you were correct in your inference that I had been governed by instructions which prevented me from adopting the Canal de Arro as the boundary channel. In reply, I not only informed you that the inference was erroneous, but, being most anxious to satisfy you of the freedom of my action, I went beyond what you requested, for I furnished you with an extract from Her Majesty's commission, which was sufficient to show that, so long as I was acting as commissioner under that commission, I could not be governed by any instructions which would restrict the exercise of my judgment in the course of my proceedings. Such being the case, you must pardon me for feeling somewhat more than surprise, when I received your letter of the 12th instant, for it appears to me that notwithstanding all this evidence, and notwithstanding these assurances, you would still endeavour to insinuate that I have not been acting, to say the least, independently, in my official intercourse with you. Under such circumstances I respectfully conceive that, having a due regard to my own position, I should be adopting no more than a natural course, and I should be committing no discourteous act, were I to decline to enter further into the subject; but as I am really desirous to disabuse your mind of any doubts you may have conceived as to my powers being equal to your own, and as I am unwilling to take any step, however much it might be warranted, which would in the least appear as if I wished to avoid furnishing

you with any documents or information that you can in reason desire, I am, for the once, content to waive the foregoing considerations, and I therefore enclose to you herewith a full copy of Her Majesty's commission, constituting me her first commissioner for ascertaining the line of boundary as before described; and also a copy of the instructions which immediately relate to my duties as commissioner, and which are similar in their character to those furnished me as being the instructions issued to you by your Government. I have other instructions, it is true, all more or less connected with the special duties upon which I am employed, both as Her Majesty's commissioner and as captain of one of Her Majesty's ships; but as these instructions neither affect Her Majesty's commission, nor have any bearing upon the course I have pursued with regard to the boundary channel, you can hardly with reason require or expect that I should place them in your hands as United States Commissioner.

"3. After the positive assurances I have already given you, and have again conveyed to you in this letter, that I have been perfectly free and unfettered in my course of action, I think you cannot fail to be satisfied that I have not been governed by prohibitory instructions as to the adoption of the Canal de Arro as the boundary channel; but that, by Her Majesty's commission, I am fully empowered to adopt the channel which shall carry the boundary line, as described in the first article of the treaty, without even the restriction which you mention as governing you—viz., that the said channel shall also correspond to the '*intention of the treaty-makers.*' It would therefore seem that I am less confined in the adoption of a boundary channel than you are, for I am at liberty to determine a channel *from the treaty itself*, without encumbering it with a consideration of any additional matter as to the intentions of either party. My commission refers to the *treaty alone;* and so, I think, does yours. I rest my claim to the boundary channel entirely upon the evidence furnished by the first article of the treaty; you, at the outset, grounded your claim upon evidence of which no mention is to

be found in the treaty, and which, therefore, cannot be considered as forming part of the treaty; and you have since asserted that you are willing to let the question 'rest *entirely*' upon such evidence; therefore, if your claim is to rest '*entirely*' upon evidence, *apart from the treaty*, it evidently cannot in any way rest *upon the treaty*. Under such circumstances there can be but little doubt as to which is the sounder claim of the two, if the treaty itself, and the commissions under which we profess to act, be of any value.

"4. In reply to your letter of the 15th instant I regret you should have taken the trouble to furnish me with a copy of your commission as United States Commissioner, for I had not attempted to cast any doubt upon your capability of joining with me in the demarcation of the water boundary line under the aforesaid treaty. I was satisfied, at the commencement of our proceedings, that, under your commission, you were sufficiently empowered to act, and therefore I had no desire, at the present time, to receive any renewal of the proof thereof.

"Taking this opportunity of assuring you of my consideration and respect, I beg you will allow me to subscribe myself your most obedient and humble servant,

"JAMES C. PREVOST,

"Captain H.B.M. Ship *Satellite* and H.M. First Commissioner
"for determining the Line of Boundary, as before described.

"Archibald Campbell, Esq,
"United States Commissioner for the North-west Boundary."

Mr. Campbell replied as follows:(1)—

"Washington City, D.C., April 14, 1858.

"SIR,—Your letter of the 22nd December (enclosing a copy of your commission and original instructions), addressed to me at Port Townshend, Washington Territory, reached me at this place on the 1st ultimo.

"In reply thereto, I have the honour respectfully to state

(1) American State Papers, p. 100.

that, during our discussions in relation to the determination of 'the channel' separating the continent from Vancouver's Island, I thought I perceived that your mind was subject to difficulties not inherent in the question; and this impression was strengthened when you informed me that you had instructions for your guidance, in the event of our disagreement, which, according to my recollection, were not embodied in those you exhibited to me at our first meeting.

"I knew your commission gave you ample powers to bind your Government; but there might be conditions in your instructions which would prevent you, under certain circumstances, from exercising those powers to their full extent. And it occurred to me that, unless I could be informed of all the difficulties in the way of an agreement between us, I should labour under great disadvantage in laying the matter before my Government for its further action.

"Under these impressions I made the inquiries contained in my letter of the 4th of December, and subsequently requested copies of your instructions. It would, perhaps, as you suggest, have been more regular to have made the request at an earlier period. But I do not know that either party could, of right, demand copies of the instructions given to the other by his Government. Nevertheless, as the British Ambassador at Washington had requested and promptly received, from the State Department, and you had been furnished by him with, a copy of the instructions given by my Government to me, I think that when I felt it necessary, even at that late period, to apply to you for a copy of your instructions, the request should not have been considered unreasonable.

"It is unnecessary to observe that the copy you furnish is not a compliance with my request, as it is not the document containing the directions cited by you, and which have been referred to as those likely to have embarrassed our proceedings.

"In conclusion, permit me to say I think you have misapprehended the object of my request for copies of your instructions. I did not by that request intend to convey the

idea that you had not acted in accordance with your own judgment. I regret, therefore, that you should have felt it necessary to repeat the assurances made in your letter of the 8th of December, which, if any were required, I need hardly say, would have been quite sufficient to disabuse me of any doubt I might have entertained on the subject.

"With the highest esteem, I have the honour to be, very respectfully, your most obedient servant,

"ARCHIBALD CAMPBELL,
"Commissioner on the part of the United States for
"determining the North-west Boundary Line.
"Captain James C. Prevost, R.N.,
"British Commissioner, &c. &c. &c."

The correspondence on this head closed with a formal letter of acknowledgment from Captain Prevost.(1)

The seventh meeting of the Joint Commission was held at the office of the United States Boundary Commission, on the 16th August, 1858, and the following minute was taken of the proceedings thereat:(2) —

"Present, Archibald Campbell, Esq., Commissioner on the part of the United States, &c.; Lieutenant John G. Parke, Topographical Engineers, Chief Astronomer and Surveyor on the part of the United States; William J. Warren, Secretary United States Commission; Captain James C. Prevost, Royal Navy, Her Majesty's First Commissioner, &c.; Captain George Henry Richards, Royal Navy, Her Majesty's Second Commissioner, &c.; William A. G. Young, Secretary British Commission.

"Mr. Campbell stated to Captain Prevost that his object in calling the present meeting was conveyed in his letter of the 14th instant, and the enclosed report of Mr. Parke, as follows:—

(1) American State Papers, p. 101. (2) *Idem*, p. 85.

"'United States Boundary Commission,
"'Camp Simiahmoo, August 14, 1858.

"'SIR,—I have the honour to enclose herewith the copy of a communication from Lieutenant Parke, the Chief Astronomer and Surveyor of the United States Boundary Commission, and for the purpose of carrying out the objects therein specified by him, I propose that a full meeting of the Joint Commission be held at this place to fix definitely the points of the boundary line therein referred to, and to make the necessary arrangements for erecting suitable monuments to mark their position.

"'With high esteem, I have the honour to be, very respectfully, your obedient servant,

"'ARCHIBALD CAMPBELL,
"'United States Commissioner.

"'Captain James C. Prevost,
"'British Commissioner H.M. *Satellite*, Simiahmoo Bay."

"'United States Boundary Commission,
"'Camp Simiahmoo, August 14, 1858.

"'SIR,—I have the honour respectfully to report that I have determined, by astronomical observations and survey, so much of the forty-ninth parallel of north latitude as is embraced between the eastern shore of the Gulf of Georgia, on Point Roberts, and the eastern shore line of Simiahmoo Bay. These points of the parallel have been marked by stakes or posts, and I would respectfully recommend that a meeting of the Joint Commission be had for the purpose of ratifying and confirming their determination, and taking the necessary steps towards the erection of proper monuments for permanently marking and defining the line. The points marked are as follows:—

"'1. Where the parallel crosses the western face of Point Roberts.

"'2. Where it crosses the eastern face of Point Roberts; and,

"'3. Where it enters the timber on the eastern shore of Simiahmoo Bay.

"'It may be well to add that these marks are all temporary in their character, and should therefore be speedily replaced by permanent solid structures.

"'I have the honour to be, very respectfully, your obedient servant,

"'JNO. G. PARKE,

"'Lieut. Corps Topographical Engineers, Chief

"'Astronomer and Surveyor.

"'Archibald Campbell, Esq.,

"'United States Commissioner, &c. &c.'

"Captain Richards having signified his acceptance of the points as determined by Mr. Parke, Captain Prevost expressed his readiness to adopt them, and erect monuments thereat.

"Mr. Campbell thereupon proposed that the first of these points referred to by Mr. Parke be suitably marked by the most conspicuous monument, it being the initial point of the forty-ninth parallel on the continent, and being the point where the forty-ninth parallel strikes the eastern shore of 'the channel which separates the continent from Vancouver's Island.'

"Captain Prevost stated in reply, that he declined entering into any discussion as to which was or was not the initial point, but he was prepared simply to agree to the points already determined by the astronomers, as points on the line of boundary.

"Mr. Campbell objected to any determination of the points in question, without the one on the western face of Point Roberts being established as the initial point of the forty-ninth parallel on the continent.

"Commissioners then agreed to adjourn.

"ARCHIBALD CAMPBELL.

"JAMES C. PREVOST."

Subsequently Mr. Campbell wrote to Mr. Cass, as follows:—

"United States North-west Boundary Commission,
"Camp Simiahmoo, 49th parallel, September 25th, 1858.(1)

"SIR,—In compliance with my instructions to keep the department from time to time advised of the progress of the work entrusted to my charge, I have the honour to report, &c. * *

"The determination of the forty-ninth parallel being a purely scientific operation, it is not probable, in the survey of the land boundary, that any question can arise between the commissioners that will cause serious interruption or delay in the demarcation of the line.

"In reference to the water boundary, however, which depends mainly upon the interpretation of the language of the treaty defining it, I had the honour, on the 10th of February last, to inform you that a question had arisen between Captain Prevost and myself as to the 'channel' through which the boundary line is to be traced; and to lay before you a copy of a correspondence and proceedings, setting forth our respective views on the subject, and the result of our disagreement. Since that time no further progress has been made in the settlement of this question. Meantime the minute survey of the channels and islands between the continent and Vancouver's Island is progressing. On the part of the United States Commission, the hydrographic work is carried on by Commander Alden, United States Navy, in charge of the Coast Survey steamer *Active*, and the triangulation and survey of the shore line by Mr. Lawson, assistant of the Coast Survey, in charge of the brig *Fauntleroy*. On the part of the British Commission, the work is prosecuted by Captain Richards, Second Commissioner and Surveyor, in command of Her Majesty's surveying steamer *Plumper*.

"The settlement of the question of the 'channel' involves the sovereignty of the group of islands called the Haro Archipelago, between the Canal de Haro and Rosario Straits, embraced in a space of about 400 square miles. The recent emigration to this region has attracted considerable attention to this beautiful and picturesque group of islands, and much

(1) American State Papers, p. 51.

greater interest than heretofore is now manifested in the settlement of the boundary question. The uncertainty in regard to their sovereignty prevents them from being occupied by American settlers. The largest and most valuable of these islands are San Juan, Orcas, and Lopez, and upon each of them there is a large portion of land suitable for agricultural and grazing purposes. It is in a military and naval point of view, however, that their importance is to be mainly regarded."

The letter then referred to and quoted the report of General Persifer A. Smith, an extract from which has been already quoted:(1)—

"In 1855 Captain George Stoneman, of the Dragoons, and Lieutenant W. H. C. Whiting, of the Corps of Engineers, by order of General Wool, then commanding the Department of the Pacific, made a military examination of this part of the north-west coast, and in their report they express their opinion in relation to the value of these islands, as a means of defending the approaches to our territories and the inland waters, as follows:—

"'Between the Gulf of Georgia and the Straits of Fuca are two great channels, the Straits of Haro on the west and of Rosario on the east, separated by the Archipelago, a group of small islands, forming a very important feature of the sound. The title to these is in dispute between the English and American Governments. There can, however, be no reasonable doubt as to the validity of our claim. The natural and direct ship channel, the treaty boundary, is the Straits of Haro. No vessel bound for the Gulf of Georgia would take the longer, narrower, and more intricate passage of Rosario Straits. In considering the subject of the defence of the sound, these islands are important, and we shall again briefly recur to them.

* * * * * *

"'It is easily seen from the maps of our western coast that the sound and the straits are the only available point

(1) *Ante*, p. 28.

which can afford an enemy the *point d'appui* for an attack on San Francisco, or refuge, wood, water, coal, provisions, timber, and spars, for a blockade of our coast. Possessing this, an enemy has every advantage, either for prompt attack, or for continued action. The strong north-west winds which prevail with the regularity of the trades for the greater part of the year make the passage of sailing ships from six to ten days, while steamers may do it in four. Vancouver's Island is naturally the key to this position, and it is greatly to be regretted that it does not belong to us. *There are, however, other points which may be improved to be nearly as effective.* Of these may be mentioned Port Discovery and Sequin Bay, opposite to the southern end of Vancouver; *and also the Archipelago.* This group consists of the islands of San Juan, Lopez, Orcas, and Waldron the largest, besides several others not yet named. They are so situated that they form an admirable land-locked harbour of ample size, accessible by six narrow entrances in any wind and weather, and capable of being defended almost by small arms. As a naval station, secured by batteries, this position commands all the interior waters and the approach to the territories.'

"A further evidence of the importance to be attached to the sovereignty of these islands will be found in the steadiness of purpose with which the British Government, from the ratification of the treaty to the present time, have endeavoured to secure and retain possession of them. It is true that in their communications to our Government, when endeavouring to procure the adoption of Rosario Straits as the boundary channel, they have designated them as 'islets of little or no value,' yet, at the same time, Governor Douglas had 'received the orders of Her Majesty's Ministers to treat these islands as part of the British dominions.'

"By a reference to my report of the 10th of February last, it will be seen that after a full discussion upon the relative claims of the Canal de Haro and Rosario Straits to be considered as 'the channel which separates the continent from Vancouver's Island,' Captain Prevost finally proposed, by way of compromise,

to run the boundary line through one of the channels between the Canal de Haro and Rosario Straits, dividing the islands so as to give San Juan to Great Britain and the other islands of the group to the United States. Being fully satisfied that the Canal de Haro was 'the channel' intended by the treaty, I declined to entertain the proposal. Captain Prevost then proposed a reference of the whole matter to our respective Governments. As I did not consider the circumstances such as to justify him in making such a proposal, I did not concur in it. I therefore reported the proceedings of the Joint Commission to the department, and Captain Prevost, upon his own responsibility, referred the question to his Government, and has not yet received any further instructions for his guidance on the subject.

"When the British Government consider the evidence brought to light, showing the intentions of the two Governments in relation to the meaning of the language of the treaty defining the boundary line between the continent and Vancouver's Island, it is but fair to presume they will direct their commissioner to adopt the Canal de Haro as the boundary channel; and in consideration of the importance of a speedy settlement of the question, it is to be hoped that they will take early action on the subject. There is no part of the boundary between the two countries, from the Pacific Ocean to the Rocky Mountains, where a demarcation of the line is more to be desired.

"I have the honour to be, very respectfully, your obedient servant,

"ARCHIBALD CAMPBELL,
"Commissioner North-west Boundary Survey."

This was followed by another from the same to the same, dated "Camp Simiahmoo, Dec. 1, 1858," and enclosing the copy of a letter from the Hon. George Bancroft, in reply to inquiries as to the interpretation which was placed upon the first article of the treaty of 1846, in relation to the water boundary, by

the British Government, at the time he was Minister to London. Mr. Bancroft's letter was as follows:(1)—

"New York, June 15, 1858.

"SIR,—Your letter of May 27 has but just reached me, in consequence of my absence from home on a long journey.

"I was in the administration of Mr. Polk at the time when Mr. Buchanan perfected the treaty for settling the boundary of Oregon. The basis of the settlement was the parallel of forty-nine degrees, with the concession to Britain of that part of Vancouver's Island which lies south of forty-nine degrees. The United States held that both parties had a right to the free navigation of the waters round Vancouver's Island, and therefore consented that the British boundary should extend to the centre of the Channel of Haro. Such was the understanding of everybody at the time of consummating the treaty in England and at Washington. The Hudson's Bay Company may naturally enough covet the group of islands east of that channel, but the desire, which never can amount to a claim, should not be listened to for a moment.

"While I was in England no minister was preposterous enough to lend the authority of the British Government to the cupidity of the Hudson's Bay Company in this particular. I think you must find in the Department of State a copy of a very short letter of mine to Lord Palmerston, enclosing him a chart of those waters as drawn by our own Coast Survey.(2) I think in that letter I mentioned the centre of the Straits of Haro as the boundary. That chart would show by the depths of the soundings that the Straits of Haro are the channel intended in the treaty, even if there had not been a distinct understanding on the part of the British Government, as well as the American, at the time of the signing of the treaty. Lord Palmerston, in his reply acknowledging the receipt of the chart, made no pretence of adopting the wishes of the Hudson's Bay Company, and he never did so, even in conversation. I never had occasion in England to make any peremptory state-

(1) American State Papers, p. 53. (2) Wilkes's chart.

ment on the subject, because nothing was ever said or hinted there which required it; but always, whenever conversation turned upon the subject, whether with Lord Palmerston or with the Under-Secretary of the Colonial Office, I always spoke of the Strait of Haro as undeniably the channel of the treaty, and no member of the British Government ever took issue with me. In running the line through the centre of the Straits of Haro, there may be one or two small islands about which a question might be raised, but as to the important group that the Hudson's Bay Company covet, the demand, if made, should be met at the outset as one too preposterous to be entertained as a question. "Yours sincerely,

"GEORGE BANCROFT.

"Archibald Campbell, Esq., Commissioner, &c."

"Correspondence referred to by Mr Bancroft will be found accompanying Mr. Campbell's letter, January 20, 1859."

On the 1st of December, 1858, Mr. Campbell wrote to Mr. Cass, United States Secretary of State, and communicated to him the inferences which he (Mr. Campbell) had drawn from the tenacity with which Captain Prevost held to the opinions which he had formed on first approaching the consideration of the boundary question.(1)

Mr. Cass thereupon wrote, on the 17th January, 1859, to Mr. Dallas, United States Minister at the Court of St. James, requesting him to obtain a copy of the instructions which had been given to Captain Prevost by Her Majesty's Government.(2)

Lord Malmesbury was then at the Foreign Office, and on being applied to he immediately forwarded to Mr. Dallas copies respectively of the commission and

(1) American State Papers, p. 92.

(2) *Idem*, p. 102; Mr. Cass to Mr. Dallas.

instructions, and further instructions which had been furnished to Captain Prevost, and which have been already above set out.(1)

On the 20th January, 1859, Mr. Campbell wrote as follows to Mr. Cass :(2)—

"Camp Simiahmoo, January 20, 1859.

"Sir,—I have the honour to request that the accompanying copy of a correspondence of Mr. Boyd, Chargé d'Affaires *ad interim*, and Mr. Bancroft, Minister to London, with the Department of State, be filed with the papers I have already transmitted to the department in relation to the water boundary.

"In connection with the various documents I have heretofore laid before you on the same subject, they expose the cautious and steady policy with which the British Government have been advancing, step by step, in their pretensions to the group of islands east of the Canal de Haro, in violation of the letter and spirit of the treaty of 1846, from its ratification to the present time.

"Mr. Bancroft's connection with Mr. Polk's administration, during the negotiation and ratification of the treaty, gave him the best means of knowing with certainty the views of the contracting powers, and particularly those of his own Government, in regard to the boundary line agreed upon between the United States and British possessions; and from his position as head of the Navy Department, he took particular interest in the water boundary, as is shown by his causing to be prepared, in advance of its publication, a tracing of Captain Wilkes's chart of the space between the continent and Vancouver's Island, with soundings, showing the Canal de Haro to be the nearest channel to Vancouver's Island, as well as the main channel. His position at London as United States Minister, almost immediately after the ratification of the treaty, gave him good opportunity of ascertaining the views of the British Government in regard to the boundary channel at that early day. Until October, 1848, he appears to have

(1) American State Papers, p. 103; Lord Malmesbury to Mr. Dallas.
(2) *Idem*, p. 54.

been under the impression that the Hudson's Bay Company alone coveted the possession of the valuable group of islands east of the Canal de Haro, and that the British Ministry did not favour their pretensions. His intercourse and correspondence with Lord Palmerston on the subject naturally led him to that conclusion. He openly declared, both verbally and by letter, the Canal de Haro to be the treaty 'channel,' without any objection or denial on the part of Lord Palmerston, who, on the contrary, although studiously avoiding the mention of the Canal de Haro by name, virtually admits it when he says the *soundings* will be of *great service* to the commissioners in *determining where* the boundary line *ought to run*.

"By instructions from Lord Palmerston, Mr. Crampton, in his letter to Mr. Buchanan of January 13, 1848, proposed to the United States to appoint a joint commission for the purpose of marking out the water boundary; the commissioners to be sent out with joint instructions to carry the line down the channel through which Vancouver sailed (now called Rosario Straits), on the pretence that it was the only channel that hitherto had been surveyed and used, and that it was therefore natural to suppose that the negotiators of the Oregon treaty in employing the word 'channel' had that particular channel in view. To this communication no answer from Mr. Buchanan is found on the records of the department. But Mr. Crampton's letter to Mr. Marcy dated February 9, 1856, purports to give the reply of Mr. Buchanan to this proposition, without indicating, however, whether it was written or verbal. Mr. Buchanan is represented as 'entirely concurring in the expediency of losing no time in determining that portion of the boundary line; [he] nevertheless felt some objection to adopting the channel marked by Vancouver as the 'channel' designated by the treaty, in the absence of more accurate geographical information; and he suggested that the joint commissioners, when appointed, should be in the first place instructed to survey the region in question for the purpose of ascertaining whether the channel marked by Vancouver, or some other channel, as yet unexplored, between the numerous islands of the Gulf of Georgia, should be adopted

as the channel designated by the treaty, or, in other words, should be found to be the *main channel*, through the middle of which, according to the *generally admitted principle*, the boundary line should be run.'

"'To this suggestion,' Mr. Crampton adds, 'Her Majesty's Government, in the hope that immediate measures would be taken by the Government of the United States to name commissioners to proceed to the spot with those already designated by the British Government, made no objection.' And this statement seems to be confirmed by the note of Lord Palmerston to Mr. Bancroft acknowledging the receipt of Captain Wilkes's charts, in which he says: 'The information as to soundings contained in these charts will, no doubt, be of great service to the commissioners who are to be appointed under the treaty of the 15th of June, 1846, by assisting them in determining *where* the line of boundary described in the first article of that treaty *ought* to be run.' This note was written after Lord Palmerston had learned from Mr. Crampton that Mr. Buchanan would not consent to adopt Vancouver's Channel, but had suggested that further surveys be made and the *main channel* adopted.

"During my discussion with Captain Prevost I had no special knowledge of Mr. Buchanan's views in regard to the water boundary any further than was to be gathered from his correspondence with Mr. McLane, published with the executive proceedings of the Senate after the injunction of secrecy was removed. From that I took the ground that Mr. Buchanan intended the Canal de Haro as 'the channel' through which the boundary line was to run, and that Mr. Pakenham must have had the same meaning when they concluded and signed the treaty. It was not until after I had reached Washington last winter that I obtained a copy of the Senate document containing Mr. Crampton's letter, from which the foregoing extracts are made. I transmitted a copy of it to the department with my report of the 10th February, and called attention to Mr. Crampton's letter.

"Lord Napier subsequently showed me a despatch from Mr. Crampton to Lord Palmerston, informing him that, in

accordance with instructions, he had read to Mr. Buchanan, or communicated to him, the substance of the despatch he had received from his lordship, and minutely relating the conversation which ensued. It is substantially the same as that recorded in the letter to Mr. Marcy, though in regard to the main channel it is rather more emphatic. Mr. Buchanan is here represented as saying he thought the main channel, no matter where it should be found, was the one intended by the treaty. And, I think, it is also added that he said he had not given the subject much reflection, but was in favour of leaving the determination of the main channel to commissioners. He also requested Mr. Crampton to embody in a letter to him the views of the Secretary of State for Foreign Affairs. Mr. Crampton informs Lord Palmerston that he has embodied his instructions in a communication to Mr. Buchanan, and hopes his lordship will not disapprove of what he has done.

" After I had submitted my report of the proceedings of the Joint Commission to the department, I was furnished with a copy of Mr. Buchanan's letter to Mr. Bancroft, dated December 28, 1846, in reply to one from Mr. Bancroft stating that it had been intimated to him that a question might arise in regard to the islands east of the Canal de Haro, and requesting authority to meet any such claim at the threshold, by the assertion of the Canal de Haro as the channel intended by the treaty. Mr. Buchanan here distinctly claims the Canal de Haro as the treaty channel, and quotes Mr. McLane's letter of the 18th of May to show that such also was the intention of Lord Aberdeen in making the proposition to the United States for a settlement of the Oregon question. He, at the same time, in compliance with Mr. Bancroft's request, transmits the traced copy of Wilkes's chart of the Canal de Haro, which Mr. Bancroft left in the Navy Department. In doing so, he says: ' This will enable you to act understandingly upon any question which may hereafter arise between the two Governments in respect to the sovereignty of the islands situate between the continent and Vancouver's Island. It is not probable, however, that any claim of this character will be seriously preferred on the part of Her Britannic

Majesty's Government, to any island lying to the eastward of the Canal de Haro, as marked on Captain Wilkes's "Map of the Oregon Territory." This, I have no doubt, is the channel which Lord Aberdeen had in view, when in a conversation with Mr. McLane, about the middle of May last, on the subject of the resumption of the negotiation for an amicable settlement of the Oregon question, his lordship explained the character of the proposition he intended to submit through Mr. Pakenham.'

"It would appear from the tenor of Mr. Buchanan's reference to the tracing of Captain Wilkes's chart of the Canal de Haro, that he was aware that it was the *main channel* in that particular part of the space between the continent and Vancouver's Island south of the forty-ninth parallel, where several channels are represented on the maps, as well as the particular channel understood between Mr. McLane and Lord Aberdeen, as carrying out the object of both Governments in deflecting from the forty-ninth parallel, viz.: to give the whole of Vancouver's Island to Great Britain. In conversing with Mr. Crampton on the subject, a year subsequently, without reference to maps or documents, and without giving the subject particular consideration, Mr. Buchanan may simply have remembered the fact that the Canal de Haro was the main channel, without recalling its name. Practically it can make no difference whether the main channel be adopted as '*the* channel' intended by the treaty upon the 'generally admitted principle' recognised by Mr. Crampton, and assented to by Her Majesty's Government in 1848, or whether the Canal de Haro be adopted on the proof of cotemporaneous evidence that it was proposed by the British Government, and in good faith accepted by the United States as the boundary channel. In either case the Canal de Haro would be the boundary channel. In advocating it with Captain Prevost, I did not confine myself singly to either of these sufficient grounds, but maintained both with others equally forcible and tenable.

"Under the mere letter of the treaty, without any knowledge of, or reference to, the motives which induced the adoption of the water boundary, 'the channel which separates

the continent from Vancouver's Island' may fairly be construed as follows:—

"1. As '*the* channel;' that is, the *main channel*, if there be more than one. And this is the view taken by nautical men generally, including officers of our navy, whom I have consulted in reference to the language of the treaty.

"2. The channel nearest to *Vancouver's* Island, without regard to its size, so that it is navigable; the proviso to the first article requiring that the *navigation* of said channel shall be free and open to both parties. If it had been intended to mean any other channel than that nearest Vancouver's Island, that island need not to have been mentioned at all, or if referred to, 'the channel which separates the continent from the archipelago east of Vancouver's Island,' or 'the channel nearest the continent,' would have been the proper description of the channel now claimed by the British Commissioner under 'the peculiarly precise and clear' language of the treaty.

"3. Upon the international ground that islands are natural appendages to the continent, and that, unless otherwise agreed, *all* the islands between the continent and Vancouver's Island east of the nearest navigable channel to Vancouver's Island pertain to the continent.

"The Canal de Haro would be the channel under either of the above legitimate readings of the treaty.

"But leaving the mere letter of the treaty, and referring to the history of the negotiation to ascertain the cause which prevented the United States and the British Government from agreeing upon the prolongation of the forty-ninth parallel to the ocean, it will be found that the southern end of Vancouver's Island was alone the stumbling-block. The British Government refused to concede it to the United States, four-fifths of the island being north of the forty-ninth parallel; and the southern end, with its harbours, being the most valuable portion. The United States, considering the disadvantages of a divided jurisdiction of the island, and the probabilities of difficulties arising therefrom, reluctantly yielded it. This was the sole object in deviating from the forty-ninth parallel, and reduces the water boundary to a very simple question. It was

a second compromise line. Divested of all quibbles, the meaning of the treaty is that the forty-ninth parallel shall be the dividing line between the territories of the United States and the British possessions until it reaches 'the middle' of the nearest natural boundary to *Vancouver's* Island; and thence the line shall be run to the ocean by the nearest natural boundary, in such a direction as will give the whole of Vancouver's Island to that power upon whose side the greatest portion would fall by the prolongation of the parallel to the ocean.

"During my recent visit to Washington, Lord Napier expressed a desire to converse with me in regard to the points of difference between the British Commissioner and myself upon the question of the water boundary. In compliance with his wishes several interviews took place between us, in which the facts and arguments on both sides of the question were fully discussed. Lord Napier conceded that he could not attach any importance to Captain Prevost's agreement in favour of Rosario Straits, based upon his interpretation of the word 'southerly,' and upon what he designates 'the very peculiar wording' of the treaty, 'though,' he added, 'the Earl of Clarendon does seem to attach some importance to it.' He also acknowledged that there was much force in the argument in favour of the Canal de Haro; that the sole object of the deviation from the forty-ninth parallel was to avoid dividing the sovereignty of Vancouver's Island and to give the whole of it to Great Britain; and agreed that if the forty-ninth parallel had intersected Vancouver's Island so as to throw the greater portion of it on the American side, the line would in all probability have been turned 'northerly' instead of 'southerly' to the Pacific Ocean; but nevertheless was unwilling to admit that Mr. McLane's report of his conference with Lord Aberdeen was definitive proof that the Canal de Haro is the boundary channel which was actually intended by his Government in the proposition they submitted to the United States. The language of the treaty in regard to the particular 'channel' through which the boundary line is to run, he argued, might be considered as at least indefinite. Captain Prevost, on the

contrary, maintains the language of the treaty in regard to 'the channel' to be so free from obscurity, and 'worded' in such 'clear and precise terms,' that he cannot conscientiously admit any evidence to weigh with him that would lead to an interpretation differing from the one chosen by him.

"As it seems to have been no part of the business of the British Commissioner to ascertain by cotemporaneous evidence the actual intentions of his own Government in regard to the water boundary, nor of his own Government to furnish him with such evidence, I suggested to Lord Napier that an examination of the instructions of Lord Aberdeen to Mr. Pakenham containing the 'proposition' referred to by Mr. McLane ought to throw some light upon the subject. He subsequently produced the original despatch from the archives of the legation, and submitted it to my perusal.

"It is a long document (dated May 18, 1846), and is mainly devoted to a review of the state of feeling between the United States and Great Britain upon the Oregon question, contrasting favourably the conduct of Great Britain with that of the United States throughout the excitement. In resuming the negotiation for an amicable settlement of the question, Mr. Pakenham is authorised to propose as a boundary line 'the forty-ninth parallel to the sea-coast, thence in a southerly direction through the centre of King George's Sound and the Straits of Fuca to the ocean, thus giving to Great Britain the whole of Vancouver's Island and its harbours.'

"I regret that Lord Napier did not feel at liberty to furnish me with a copy of the document as I requested; but, as he declined, I was obliged to content myself with a careful perusal of it. I wrote down the foregoing description of the boundary line from memory shortly afterwards, and believe it is substantially (if not verbally) correct. For greater certainty, however, it would be well for the department to obtain a copy, as there may be other points touching the subject of the boundary which escaped my notice in the attention I had to bestow on the above extract.

"Mr. McLane, in his despatch to Mr. Buchanan, of the same date (May 18, 1846), refers to the proposition to be

submitted to the United States through Mr. Pakenham, as follows :—

"'I have now to acquaint you that after the receipt of your despatches, on the 15th instant, by the *Caledonia*, I had a lengthened conference with Lord Aberdeen, on which occasion the resumption of the negotiation for an amicable settlement of the Oregon question, and the nature of the proposition he contemplated submitting for that purpose, formed the subject of a full and free conversation. I have now to state that instructions will be transmitted to Mr. Pakenham by the steamer of to-morrow to submit a new and further proposition on the part of this Government for a partition of the territory in dispute. The proposition, most probably, will offer, substantially, first, to divide the territory by the extension of the line on the parallel of forty-nine to the sea—that is to say, to the arm of the sea called Birch's Bay ; thence by the Canal de Haro and Straits of Fuca to the ocean ; and confirming to the United States, what indeed they would possess without any special confirmation, the right freely to use and navigate the strait throughout its extent.'

"Both despatches having been written almost immediately after the 'nature of the proposition' to be submitted to the United States had been fully and freely discussed, it may seem strange that the description of the boundary line contained in them is not identical. But an examination of the maps which were most probably before Mr. McLane and Lord Aberdeen in describing the line, will show the difference between them to be only apparent.

"I enclose a traced copy of Vancouver's chart, which, Captain Prevost officially informed me, he had 'not the least doubt' was the map used by his Government when the boundary line was under consideration. (See sketch No. 1, p. 59.) I also send a traced copy of so much of Captain Wilkes's 'Map of Oregon Territory' as is necessary to show the boundary channel (1) between the continent and Vancouver's Island, which I have every reason to believe is the map which was principally relied

(1) These sketches or tracings are to be found in the volume of American State Papers quoted by me, but I have not thought them worth reproducing in this book.

on by Mr. McLane at the same time. (See sketch No. 2, p. 61.) There can be little doubt that both Lord Aberdeen and himself had also in their possession the Spanish Admiralty chart of Vancouver's Island, Greenhow's, De Mofras', and other maps of the north-west coast.

"None of the maps extant at that day present a perfectly correct idea of the space between the continent and Vancouver's Island at and immediately south of the forty-ninth parallel. The Straits of Fuca and the archipelago east of the Canal de Haro are fairly enough represented; but between the Haro Archipelago and the forty-ninth parallel the space is inaccurately represented as free from islands, and, consequently, with but a single channel between the continent and Vancouver's Island. The surveys made subsequently to the conclusion of the treaty show that what was laid down by the early Spanish navigators, by Vancouver and by Wilkes, as the eastern coast of Vancouver's Island, is in fact the coast of an extensive archipelago skirting the shore of the main island between latitude 48° 47′ and 49° 10′. The actual space between the coasts of the continent and Vancouver's Island is nearly twice as great as it appears on the enclosed sketches from Vancouver's chart and Wilkes's map. A glance at the Coast Survey chart which I deposited in the department with my report of last February, will give some idea of the true position of the coast of Vancouver's Island; but as that part of the chart is only copied from a sketch furnished Captain Alden by the Hudson's Bay Company, it is by no means reliable. I send herewith a tracing from the last Admiralty chart of 'Vancouver Island and the Gulf of Georgia,' showing the same change in the coast of Vancouver's Island on a smaller scale. The British surveying steamer *Plumper* has recently completed the survey and chart of the greater portion of this space hitherto so little known, except to the Hudson's Bay Company. As soon as I obtain a tracing of it from Captain Richards, I will have a copy of the Coast Survey chart corrected by it and forwarded to the department.

"The claim of the British Government made by their Com-

missioner, that the 'channel which separates the continent from Vancouver's Island' is the channel nearest the continent, or that through which the track of Vancouver's vessel is traced, makes it important to examine Vancouver's chart in connection with the line described by Lord Aberdeen, and at the same time to trace on Wilkes's chart the line described by Mr. McLane.

"Mr. McLane, in tracing on the map the forty-ninth parallel 'to the sea, that is to say, the *arm of the sea* called Birch's Bay,' evidently supposed that the space between the continent and Vancouver's Island at the forty-ninth parallel was designated as Birch Bay. And from the conspicuous position given to the name of Birch Bay on Wilkes's map, and even on Vancouver's chart, such an error might very naturally occur. In reality, however, Birch Bay is only the small indentation on the mainland at the extreme right of the name, and is a few miles south of the forty-ninth parallel. The name of the *Gulf of Georgia* is intended by Wilkes to extend from the parallel of 50° as far south as the northern extremity of the Canal de Haro, including the space supposed by Mr. McLane to be Birch Bay. The line described by him 'thence by the Canal de Haro and Straits of Fuca to the ocean,' gives the whole of Vancouver's Island to Great Britain, in accordance with Lord Aberdeen's instructions to Mr. Pakenham, and with the understanding between Mr. McLane and Lord Aberdeen, as detailed by the former in his letter of May 18, 1846. The English Government have endeavoured to create an impression that the Canal de Haro was unknown as a navigable channel when the treaty was negotiated, and that the channel through which Vancouver sailed was well known. The Canal de Haro, on the contrary, has always been well known as a navigable channel, and its name generally put down on maps even of a small scale, which is not the case with the channel through which Vancouver sailed. It is sufficient for the United States that Captain Wilkes surveyed the Canal de Haro in person, and that the fact is officially reported in his 'Exploring Expedition,' which was reprinted and republished in England in 1845, with

the atlas containing the 'Map of the Oregon Territory.' His survey and soundings proved it to be the main channel, and a tracing of his chart was in the hands of Mr. Bancroft while a member of Mr. Polk's cabinet. The channel through which Vancouver sailed has had various names. It is called the 'Canal de Fidalgo' on the early Spanish maps. Vancouver gave it no name. De Mofras, in 1841, has no name for it. Wilkes called it [in 1841] 'Ringgold's Channel.' The English Admiralty map of 1849 has it 'Rosario Strait.' Arrowsmith, in 1849, called it 'Vancouver's Strait,' and it is now universally called Rosario Straits. On all of these maps the channel nearest Vancouver's Island at its southern end is designated as the Canal de Haro, having received its name from its discoverer as early as 1789. De Mofras [in 1841] in describing the space between the continent and Vancouver's Island, says:—'Here is found a multitude of little islands, which, notwithstanding the safe shelter they offer to vessels, present great impediments to navigation. The easiest passage is by the *Canal de Haro*, between the island of Quadra and Vancouver and that of San Juan.' And this opinion he must have derived from the general report of those engaged in the navigation of these waters, as his own explorations are considered very superficial.

"Lord Aberdeen, in tracing the boundary line, follows the forty-ninth parallel to the sea-coast, and deflects 'thence in a southerly direction through the centre of *King George's Sound* and the Straits of Fuca to the ocean.' On either of the accompanying tracings, and, indeed, upon any map of the north-west coast, we may look in vain for 'King George's Sound' between the continent and Vancouver's Island. This mistake is not so readily accounted for as Mr. McLane's in regard to Birch Bay, as the name is nowhere to be found on Vancouver's chart, which is said to have been used by the British Government in reference to the water boundary. 'King George's Sound' is the name that was given, in 1778, by Captain Cook, to Nootka Sound, on the western coast of Vancouver's Island, between latitude 49° and 50°. The name was never much in vogue,

except to distinguish a mercantile association formed soon after the discovery of Nootka, called the 'King George's Sound Company.' There is, however, no need of conjecture as to Lord Aberdeen's actual meaning. He simply miscalled the Gulf of Georgia. I should hardly have noticed this discrepancy, nor that of Mr. McLane, if the British Commissioner had not seized upon the latter with a view to weaken Mr. McLane's evidence in favour of the Canal de Haro, maintaining that if the Canal de Haro should be adopted upon Mr. McLane's statement, with equal justness it might be argued that the line along the forty-ninth parallel should not strike the water at the *forty-ninth parallel*, but that it *should deflect* to *Birch's Bay*, which is a few miles to the southward.'

"On Vancouver's chart the 'Gulf of Georgia' extends as far south as the eastern extremity of the Straits of Fuca, and the name as printed appears intended to embrace generally the whole space between the continent and Vancouver's Island, including the Canal de Haro and Rosario Straits. From the forty-ninth parallel 'in a southerly direction,' as far as latitude 48° 47', there is but one channel represented by Vancouver, and there is no practical difficulty in drawing a line through the 'centre' of it. From there, southerly to the Straits of Fuca, a line drawn 'through the centre of King George's Sound' [or Gulf of Georgia] that is, midway between the shores of the continent and Vancouver's Island, would cut these islands into parts, and divide their jurisdiction between the United States and Great Britain; to avoid which, even in regard to the large island of Vancouver, the United States yielded their rights to the portion south of the forty-ninth parallel, and agreed, as a compromise, upon the nearest natural boundary. Of course, a line dividing the smaller islands into parts could never have been contemplated by the British Government, nor has it ever been claimed. But such would be the practical effect of Lord Aberdeen's proposition, if literally carried out. Giving the proposition, however, the advantage of the most liberal as well as the most literal interpretation, the centre of the space between the continent and Vancouver's

Island cannot, by any possibility, be transferred to the centre of Rosario Straits. The utmost liberality or literality could only force the line through the channel east of the island of San Juan. A line drawn through that channel would more nearly pass through the centre of the whole space between the continent and Vancouver's Island than if drawn through any other channel. But it has never been pretended that San Juan Channel was intended by the British Government as the boundary channel, and therefore can never be claimed as 'the channel' intended by the treaty. The two channels respectively claimed are the Canal de Haro and Rosario Straits, through one of which, according to the views of each Government, must the boundary line be run to 'carry the treaty into effect.' Mr. McLane's despatch of May 18, 1846, to his Government, is the most important cotemporaneous evidence (on the American side of the question) of the intentions of the British Government in relation to the boundary channel, and Lord Aberdeen's instructions to Mr. Pakenham of the same date the highest evidence the British Government could produce on the British side. Mr. McLane's evidence in favour of the Canal de Haro is explicit, and requires no explanation. I have shown that the line described in Lord Aberdeen's proposition cannot be tortured into a line through the middle of Rosario Straits. As he mentions neither channel, the same might be said of the Canal de Haro; and if there was nothing further to guide us as to the line really intended by Lord Aberdeen, we might have to fall back on the motive which induced the deflection from the forty-ninth parallel to the ocean by the water boundary, viz., to give Great Britain the whole of Vancouver Island, or, according to the 'generally admitted principle' in such cases, adopt the main channel. In either case the Canal de Haro would answer to 'the channel' of the treaty.

"But, fortunately, Lord Aberdeen does not leave the meaning of his proposition in any doubt; for he concludes his description with an explicit declaration of the object of the boundary, '*thus* [or, *in this manner*] *giving to Great Britain*

the whole of Vancouver's Island and its harbours.' This conclusion confirms the correctness of Mr. McLane's statement of Lord Aberdeen's explanation of 'the nature of the proposition' he contemplated submitting to the United States through Mr. Pakenham in regard to the boundary line. This boundary was, without the slightest doubt, adopted and proposed by the British Government in consequence of an assurance on the part of Mr. McLane that such a line would probably be accepted by the United States. Mr. McLane had the authority of his Government so to inform Lord Aberdeen, as will be seen by reference to Mr. Buchanan's letter to Mr. McLane, dated February 26, 1846, in Senate Document No. 489, containing the 'Executive proceedings, correspondence, and documents relating to Oregon, from which the injunction of secrecy has been removed,' a copy of which accompanies my report of February 10, 1858.

"After I had finished reading Lord Aberdeen's instructions to Mr. Pakenham, Lord Napier asked my opinion of the proposition. I told him that it completely confirmed my views in regard to the Canal de Haro. He reiterated the acknowledgment that he had previously made as to the general object of the water boundary, but still would not admit the correctness of my conclusion that the Canal de Haro was 'the channel' actually proposed by his Government as part of the boundary channel, and remarked that if the United States intended the Canal de Haro as 'the channel,' they should have introduced it in the treaty. I replied that the United States Government were perfectly satisfied with the language of the *projet*, which conveyed to their understanding but one meaning so far as the boundary line is concerned; they had adopted it in good faith, and therefore could have no motive for proposing an alteration; but that even if the language had been susceptible of more than one meaning, and they had wished to modify it, Mr. Pakenham had not the authority to agree to any modification. Lord Napier replied that Mr. Pakenham could have agreed to any such *slight* modification as the one referred to. Mr. McLane says: 'It may be considered certain, also, in my

opinion, that the offer now to be made is not to be submitted as an ultimatum, and is not intended as such, though *I have reason to know that Mr. Pakenham will not be authorised to accept or reject any modification that may be proposed on our part*, but that he will in such case be instructed to refer the modification to his Government.'

"In your speech upon the ratification of the treaty you say: 'The treaty comes to us as it came from England, without the crossing of a *t* or the dotting of an *i*, untouched and unchanged, and the vote we have already taken announces but too clearly that we shall return it as received, by making its terms our own.' And Mr. Benton says, the first article 'is in the very words which I myself would have used, if the two Governments had left it to me to draw the boundary line between them, . . . and that article constitutes the treaty. With me it is the treaty. . . . The great question was that of boundary. On that point hung the issue of peace or war. *That being settled*, statesmen do not permit subordinate accessorial matter to baulk the great conclusion. In this spirit the British ministers have acted. They have not made their proposition an ultimatum; they leave it open to our objections, and of course to modifications. I have no doubt the three minor articles might be modified to my entire satisfaction, but the question with me is whether the difference is *worth the delay*. . . . Forty-five days is the shortest time in which we could expect an *answer from London in reply to proposed modifications*.'

"Mr. McLane, from the positive manner in which he writes, could hardly have derived his knowledge of Mr. Pakenham's powers from any source less authoritative than Lord Aberdeen, who probably communicated it as an incentive to the United States to accept the *projet of the treaty* without modification, and Mr. Benton's argument against delay unquestionably had much weight with the Senate in accepting the *projet* with objectionable conditions in the minor articles.

"The absence of any allusion by Lord Aberdeen to the *projet* of the treaty, which I had always supposed was drawn

up in London, and the informal description of the boundary in the proposition which he authorised Mr. Pakenham to make to the United States, induced me to inquire of Lord Napier if I was not correct in that supposition, and whether Lord Aberdeen had not transmitted the *projet* to Mr. Pakenham; and I thus learned that *another despatch* enclosed the *projet* of the treaty. This despatch his Lordship did not offer to submit to my perusal.

"There are arguments and intimations in Captain Prevost's correspondence based upon the probability that the Canal de Haro was originally mentioned in the *projet* of the treaty as the channel through which the boundary line was run, but that subsequently the proposition was 'designedly altered,' the Canal de Haro expunged, 'and the wording of the treaty as it now stands substituted to meet the alteration.' After stating his reasons for believing this alteration was made, Captain Prevost says:—

"'I am the more strengthened in my opinion on this subject from having been officially informed, by high and competent authority, that the channel commonly known in England as the Vancouver's Strait—that now called the Rosario Strait—was the channel contemplated by the British Government as the channel of the treaty; and the *mention of a particular channel* by Mr. McLane, and the absence of the *name of that channel* from the treaty, together with the *very peculiar wording* of the treaty, would seem almost conclusively to prove the fact.'

"Presuming Captain Prevost seriously entertained the opinion that the *projet* was 'designedly altered,' I laboured, and I think not without success, to satisfy him that it could not have been altered with the knowledge or consent of Mr. McLane or of Mr. Buchanan, and that in good faith it could not have been altered by the British Government without their knowledge and consent. I was at a loss to conceive when and where this designed alteration could have taken place, whether at London or Washington, and called upon Captain Prevost for further information on the subject. The only reply I

received was that 'the high and official authority to whom I [he] alluded in my [his] letter of the 9th instant, as the source of my [his] information that the Vancouver's [or Rosario] Strait was the channel contemplated by the British Government, is Her Majesty's present Secretary of State for Foreign Affairs, the Earl of Clarendon, and I cannot presume that he would intimate to me in writing, as he has done, that such was the case, unless he had substantial grounds for doing so.'

"The '*very peculiar wording* of the treaty,' referred to by Captain Prevost as tending 'almost conclusively to prove the fact' that the *projet* of the treaty was 'designedly altered,' is explained by him as follows:—

"'In support of my proposition that the Rosario Strait should be the channel of the treaty, I advance that it is the only channel that will admit of being considered the channel according to the treaty which "separates the *continent* from *Vancouver's Island*." You state that "while the other channels only separate the islands in the group from each other, the Canal de Haro for a considerable distance north of the Straits of Fuca, and where their waters unite, washes the shore of Vancouver's Island," and is, therefore, the only one which, according to the language of the treaty, "separates the continent from *Vancouver's Island*." Surely this would prove the converse of the proposition. It appears to me a direct proof that the Canal de Haro is the channel separating *Vancouver's Island* from the *continent*, and, therefore, so long as other channels exist more adjacent to the continent, cannot be the channel which separates the continent from Vancouver's Island. I would ask your best attention to this most peculiar language of the treaty, in which the usual terms of expression appear to be designedly reversed, for the lesser is not separated from the greater, but the greater from the lesser—not the *island* from the *continent*, but the *continent* from the *island*, and therefore it would seem indisputable that where several channels exist between the two, that channel which is the most adjacent to the continent must be the channel which *separates*

the continent from any islands lying off its shores, however remote those islands may be.'

"From this extract it will be seen that Captain Prevost bases his claim to Rosaria Straits as the boundary channel solely on the ground that the words 'the continent' and 'Vancouver's Island,' 'appear to be designedly reversed' in the language of the treaty. Whilst it is scarcely credible that such a transposition of words could have been made with a view to alter the sense of the treaty, still the confidence with which Captain Prevost maintains this ground in the face of the most positive evidence to the contrary, in connection with the fact that the Earl of Clarendon also attaches some importance to it, is not without its influence in creating an impression upon the mind that such a construction of the language may (however unsuccessfully) have been designed for the purpose suggested, or at least with the view of eventually throwing an air of doubt over the real meaning of the treaty. That no one connected with the negociation of the treaty on the part of the United States was ever informed of such a design, or ever discovered of themselves this 'very peculiar wording' of the treaty, is conclusively proved by the contemporaneous evidence already referred to. On the contrary, Mr. Benton, who was scrupulously nice in the use of language, emphatically declares the language of the first article to be couched in the very words he himself would have used, if he had been called upon to draw it up, for the purpose of carrying the line through the Canal de Haro.

"The general object of the treaty, as declared in the preamble, is that 'the state of doubt and uncertainty which has hitherto prevailed respecting the sovereignty and government of the territory on the north-west coast of America, lying westward of the Rocky or Stony Mountains, should be finally terminated by an amicable compromise of the rights mutually asserted by the two parties over the said territory.' The 'amicable compromise,' so far as it relotes to a division of the territory in dispute, was an agreement to continue the boundary line along the forty-ninth parallel on the continent, and

then a water boundary so as to give the whole of Vancouver's Island to Great Britain. The correspondence of Mr. McLane and Mr. Buchanan shows that the southern end of Vancouver's Island was all that Great Britain refused to yield south of the forty-ninth parallel, and all that the United States were willing to concede. Mr. Benton, the leading senator in favour of the treaty, advocates its ratification with that understanding of its meaning. In his speech on that occasion, he says :—

"'The line established by that article [the 1st] the prolongation of the boundary on the east side of the Rocky Mountains, follows the parallel of forty-nine degrees to the sea, with a slight deflection through the Straits of Fuca *to avoid cutting the south end of Vancouver's Island.* . . . . . When the line reaches the channel which separates Vancouver's Island from the continent (which it does within sight of the mouth of Fraser River), it proceeds to the middle of the channel, and thence turning south through the Channel de Haro (wrongly written Arro on the maps) to the Straits of Fuca; and then west through the middle of that strait to the sea. This is a fair partition of these waters, and gives us everything that we want—namely, all the waters of Puget Sound, Hood's Canal, Admiralty Inlet, Bellingham Bay, Birch Bay, and with them *the cluster of islands*, probably of no value, *between De Haro's Channel and the continent.*'

"In your speech against the ratification, on the same day, and apparently in reply to Mr. Benton, you say :—

"'We have ceded to England the southern cape of Vancouver's Island, an important position which has been heretofore a subject of discussion between the two Governments. . . . . Judging from the imperfect map I have examined, it cannot be much less than one hundred miles. Upon what principle of right or compromise this cession is to be made I have not heard explained. For myself I know of none but the old rule of might. England demands it, and we yield, and that tells the whole story.'

"In commenting upon the first article of the treaty, you thus describe the water boundary :—

"'Vancouver's Island is separated from the continent by an arm of the sea, and about 250 miles in extent, different portions of which are known by different names. One part is called the Straits of Fuca; another the *Canal de Haro*, another the Gulf of Georgia, and the fourth Queen Charlotte's Sound.'

"Although differing with Mr. Benton upon the construction that may be placed by Great Britain upon the second, third, and fourth articles, and the *proviso* to the first article of the treaty (to which, in your opinion, the vagueness of their terms will render them liable when they come to be carried into effect), there is no disagreement between you as to the meaning of the language of the important article defining the boundary line. Nor does it seem ever to have been considered susceptible of more than one meaning by any person connected with the negociation and ratification of the treaty on the part of the United States.

"The wording of the treaty is the work of the British Government. It was in their power to frame the language defining the boundary line so as to have precluded the 'state of doubt and uncertainty' in which they have ever since its ratification so zealously laboured to involve it; and if Captain Prevost has any foundation for the strong conviction he expresses that the Canal de Haro was originally in the *projet* of the treaty, and that by a designed alteration it was subsequently left out and the present language substituted to change its meaning, and that the words 'the continent' and 'Vancouver's Island' were 'designedly reversed,' with a view to make Rosario Straits 'the channel which separates the continent from Vancouver's Island,' he places his Government in no enviable position.

"Considering that Captain Prevost was 'officially informed' by the Earl of Clarendon (the Secretary of State for Foreign Affairs, from whom he received his instructions) that Rosario Straits was the channel contemplated by the British Government as the channel of the treaty, I thought it not improbable that the instructions of Lord Aberdeen to Mr. Pakenham might have furnished some foundation for the

assertion. Captain Prevost designates the Earl of Clarendon as 'high and competent authority' in regard to the treaty channel. The highest authority in Great Britain on the treaty of 1846 must be the head of the department for foreign affairs who conducted the negociation of the treaty, and who authorised the proposition which brought it to a conclusion. Before the treaty was accepted and ratified by the United States and returned to London for the exchange of ratifications, a change of ministry had taken place, and Lord Palmerston, who succeeded Lord Aberdeen as Secretary of State for Foreign Affairs, exchanged the ratifications with Mr. McLane, July 17, 1846, within two months from the date of Lord Aberdeen's instructions to Mr. Pakenham. Lord Palmerston must, therefore, also be regarded as high and competent authority as to the intentions of his Government in regard to the boundary channel. His views on that subject have already been fully set forth, and certainly do not sustain the intimations of the Earl of Clarendon to Captain Prevost any more than does the proposition of Lord Aberdeen in his instructions to Mr. Pakenham. I have not at hand the means of ascertaining the official position held by the Earl of Clarendon in the British Ministry during the negociation and conclusion of the treaty of 1846, or whether, indeed, he occupied any position under the British Government during that period. But it can hardly be supposed that, under any circumstances, he had better means of information than Lord Aberdeen or Lord Palmerston in regard to the details of the treaty. And their views, as hereinbefore set forth, certainly do not sustain Captain Prevost's presumption that the Earl of Clarendon 'had substantial grounds' for intimating to him in writing, as he had done, that Vancouver (or Rosario) Straits was the channel contemplated by his Government.

"Although the instructions of Lord Aberdeen to Mr. Pakenham could not possibly be construed into evidence in favour of Rosario Straits, the 'peculiar wording' of his description of the water boundary line might very naturally suggest to the Earl of Clarendon the idea of the San Juan Channel as a

compromise in case of failure to obtain Rosario Straits, which might be agreed upon if it should be found the United States had no contemporaneous evidence to show the real intentions of the two Governments. And here I conceive is the secret of the claim for Rosario Straits. The British Government never could have seriously expected the United States to agree to that channel as a boundary, but made it a pretence, in the hope of being thus able to obtain a compromise line, by which they would secure the valuable and much-coveted island of San Juan.

"The motive which induced the first proposition of Lord Palmerston to the United States, to appoint commissioners to mark out the water boundary, is embodied in Mr. Crampton's letter to Mr. Buchanan, of January 13, 1848. Extracts from that letter will best exhibit Lord Palmerston's motive and object in making the proposal. (See extract accompanying correspondence with Captain Prevost.) (1)

"If the foregoing extracts be a sincere expression of the views of the British Government in regard to the water boundary at the date of Mr. Crampton's letter (and there certainly could have been no motive for throwing doubt upon the wording of the treaty if it clearly meant Rosario Straits as the the channel), at that early day they considered the boundary line between the Gulf of Georgia and the Straits of Fuca as less distinctly and accurately defined by the verbal description of the treaty than any part of the boundary line between the Atlantic and Pacific Oceans, not hitherto determined and marked. And in this opinion it would appear that Mr. Pakenham agrees with Lord Palmerston, so far at least as regards the supposition that Rosario Straits is the particular channel the negociators of the Oregon convention had in view in employing the word 'channel.' As this is the only official document in my possession wherein Mr. Pakenham's views in regard to the boundary are expressed or alluded to, I consider it important as establishing the fact that in his 'suggestion' to his Government he did not claim Rosario Straits to be the boundary channel intended by Mr. Buchanan and himself, the

(1) *Ante* p. 45, and American State Papers, pp. 40, 41.

signers of the treaty. The very important part he had in the negociation and conclusion of the treaty ought to constitute him high authority with the British Government in all matters pertaining to the boundary. If Mr. Pakenham had received no other instructions from Lord Aberdeen in regard to the proposition he was authorised to submit to the United States for the settlement of the Oregon question than those Lord Napier exhibited to me, it is not easy to conceive how he could foresee any 'serious doubt or difference of opinion' between the two Governments in regard to that portion of the boundary now in dispute. But the views of Mr. Pakenham are not sufficiently disclosed in Mr. Crampton's letter to justify an opinion as to the exact nature and extent of his 'suggestion' to Her Majesty's Government in regard to the water boundary. I think it not improbable, however, that the instructions of Lord Palmerston to Mr. Crampton were based upon that 'suggestion.' If the British Government should persist in refusing to adopt the Canal de Haro as the treaty channel, the production of Mr. Pakenham's despatch containing the suggestion referred to may become important to the United States, further to reveal the origin of the British claim to the Haro Archipelago.

"After Lord Aberdeen's conference with Mr. McLane, in which he designated the Canal de Haro as the boundary channel he intended to propose to the United States through Mr. Pakenham, he could not, in good faith, have made such a change in the proposition or *projet* of the treaty as would throw these 'numerous islets' on the British side of the line without informing Mr. McLane, so that he might notify his Government of the fact, or without instructing Mr. Pakenham to inform Mr. Buchanan of the modification. And unless the despatch of Lord Aberdeen to Mr. Pakenham enclosing the *projet* of the treaty (which I have not seen) contains instructions which authorised Mr. Pakenham to make such changes in the *projet* as would throw the Haro Archipelago on the British side of the line; and unless Mr. Pakenham made such changes, and informed Mr. Buchanan that he had done so, the

proposition of the British Government, as explained by Lord Aberdeen to Mr. McLane, must (in good faith) have remained unaltered in its meaning, and the *projet* of the treaty must have been submitted to Mr. Buchanan as it was received from Lord Aberdeen. That Lord Aberdeen never informed Mr. McLane of any such designed alteration, and that Mr. Pakenham never communicated to Mr. Buchanan that any such alteration was made in the *projet* of the treaty, either by Lord Aberdeen or himself, is evident from the fact that Mr. McLane's letter of May 18, explanatory of the intended proposition, was transmitted to the Senate with the *projet* of the treaty, when the President asked the previous advice of that body in regard to its acceptance, and also from Mr. Buchanan's letter to Mr. Bancroft of December 28, 1846, hereinbefore quoted. As Rosario Straits, therefore, cannot be claimed as 'the channel,' either upon the literal wording of the treaty, or upon the intentions of the 'actual negociators,' from the contemporaneous evidence of Lord Aberdeen, Lord Palmerston, or Mr. Pakenham, the highest British authority upon the subject of the treaty, I am at a loss as to the source from which the Earl of Clarendon could have obtained the information he 'officially' communicated to Captain Prevost that the British Government contemplated Rosario Straits as the treaty channel.

"In preparing the draught of joint instructions which accompanies Mr. Crampton's letter, the British Government, with an apparent air of frankness, and even generosity, did not neglect the opportunity of so wording it as to secure to themselves every possible advantage that could be derived from a one-sided construction of the first article of the treaty, including the *proviso*, in the event of the United States being found ignorant of or indifferent to their territorial rights in respect to the Haro Archipelago. The instructions in regard to matters of detail, respecting the mode of marking the line (which should more appropriately be left to the commissioners), are so burdensomely minute and verbose as almost to hide from view the objects to be gained. The following paragraph embodies

the gist of the whole document, so far as relates to the boundary line :—(1)

"'That part of the channel of the Gulf of Georgia which lies nearly midway between the forty-eighth and forty-ninth parallels of north latitude, appears by Vancouver's chart to be obstructed by numerous islands, which seem to be separated from each other by small and intricate channels, as yet unexplored; it has therefore been mutually determined between the Governments of Great Britain and the United States, in order to avoid the difficulties which would probably attend the exploration of all these channels, that the line of boundary shall be drawn along the middle of the wide channel to the east of those islands, which is laid down by Vancouver, and marked with soundings as the channel which had been explored and used by the officers under his command. You will find the line thus described traced in red, in the copy from Vancouver's chart hereto annexed.'

"Upon an examination of the Admiralty chart of 'Vancouver Island and the Gulf of Georgia,' published February 28, 1849, and compiled from the surveys of Galiano and Valdes in 1792, Vancouver in 1793, and Captain Kellet, Royal Navy, in 1847—although some parts of the space between the continent and Vancouver's Island do not appear to have been minutely surveyed—it will be found that the Canal de Haro, as far as it is laid down with soundings, is unmistakably represented as the channel which would give 'the whole of Vancouver's Island and its harbours to Great Britain,' while its great width and deep soundings show it to be by far the largest channel connecting the Straits of Fuca with the Gulf of Georgia. Although the chart was not published until a year after the date of Mr. Crampton's letter, the results of the survey were no doubt in possession of the Admiralty as soon after the completion of the survey as the work could be plotted. If I may judge by the survey connected with this commission, it is customary for the surveyors of the British Government to

(1) Copy of the draught will be found *ante* p. 48, and American State Papers, p. 42.

forward to the Admiralty from time to time the plotting and sketches of their work as it progresses; and it is reasonable to suppose that such was the case at the time Captain Kellet was engaged in the survey of these waters. The survey does not appear to have been carried on beyond the working season of 1847, which generally closes about the 1st of October on account of the constant rains after that period. Why the survey was discontinued, or why the time was consumed in pushing it into American waters, as far south as Hood's Canal, which might have completed the Canal de Haro, can only be explained by the supposition that any further 'detailed knowledge of those parts' did not promise to be such as the British 'Government had been led to expect'—probably by the Hudson's Bay Company. I send herewith a tracing of the chart above referred to.

"Her Majesty's Government seemed also to be of opinion that a naval officer of scientific attainments and *conciliatory character*, appointed on the part of each Government, would be sufficient for the purpose of marking out that part of the boundary which they considered as the least distinctly and accurately defined by the verbal description of the treaty of any part of the line dividing the United States from the British possessions. Before sending out these officers as commissioners, Her Majesty's Government were of the opinion that they should be instructed as to the particular channel through which the water boundary line is to run, considering it to be a question turning upon the *interpretation of the treaty*, rather than upon local observation and survey. The argument presented in favour of Vancouver (or Rosario) Straits, it has already been shown, was without any foundation in fact, and had no weight with Mr. Buchanan when presented. I mention it now as evincing at that time an apparent disposition on the part of the British Government to carry the treaty into effect according to the *intentions of the negociators of the treaty*, and not according to an inversion of the meaning of the language of the treaty. And here I beg to call attention to the simple manner in which Her Majesty's Government destroys the argument founded

upon the 'peculiar wording' of the treaty. The 'channel' is spoken of in Mr. Crampton's letter three different times as 'the channel *between* Vancouver's Island and the continent.' I would also call attention to the construction of the word 'southerly' by the British Government in Mr. Crampton's letter. Captain Prevost insists that it must be interpreted in a strictly nautical sense; upon which he raises an objection against the Canal de Haro, because, for a part of its course, it runs in a westerly direction. Mr. Crampton says the treaty 'declares that the line shall run *down* the channel which separates the continent from Vancouver's Island.' This natural construction of the word 'southerly' shows that in introducing it in the *projet* of the treaty, it was simply to indicate on the map that the Pacific Ocean was to be reached by drawing the line *down* instead of *up*, so as to give the whole of Vancouver's Island to Great Britain instead of to the United States. It is the common-sense reading of the treaty. Mr. Crampton urges, with much zeal, the adoption of Vancouver's or Rosario Straits as the channel, before the commissioners go out, as otherwise much time might be wasted in surveying the various intricate channels formed by the numerous islets between Vancouver's Island and the mainland, and apprehends that some difficulty might arise in deciding which of those channels ought to be adopted; and in doing so he speaks of it as the main channel marked on Vancouver's chart, although the Canal de Haro is far wider on that chart. He acknowledges that some objection might reasonably be made to its adoption by the United States, as being *somewhat nearer* to the continent than to Vancouver's Island. Captain Prevost, on the contrary, claims it especially on the ground that it is the *nearest* channel to the continent; that the language of the treaty was peculiarly worded to designate it as the boundary channel, and even that the *projet* of the treaty was 'designedly *altered*' for the purpose of transferring the proposed boundary line from the channel nearest Vancouver's Island to the channel nearest the continent.

"I have already adverted to the strong impression made

upon the mind of Captain Prevost that the *projet* of the treaty was designedly altered by omitting the Canal de Haro for the purpose above specified, and quoted the argument and evidence he advanced to support the correctness of his conclusions. The supposed reasons for altering the boundary channel are stated by Captain Prevost as follows:—

"'It is quite possible that in viewing the boundary as passing through the Canal de Haro, some objections might have been made to the nearness of some of the islands to the Vancouver's Island, and as the objections did not apply with equal force to the continent, and as the islands between the two were deemed, according to Mr. Benton, to be barren, rocky, and valueless, it is not at all improbable that the slight deviation in the line would be conceded without difficulty, and might be considered too trivial, considering the important interests at stake at the time, for public discussion or reference.'

"Considering that the average width of the Canal de Haro is nearly two miles greater than Rosario Straits, the argument upon which the supposed alteration of the boundary channel is based is not very forcible.

"The proposal made by Lord Palmerston to Mr. Buchanan for the appointment of commissioners was subsequently renewed at various times by the British Government through Mr. Crampton, until Congress, in 1856, authorised the organisation of the commission.

"Mr. Crampton in his letter to Mr. Marcy, of February 9, 1856, (the Earl of Clarendon then being Secretary of State for Foreign Affairs,) says:—

"'It has been a subject of regret to Her Majesty's Government that, for causes upon which it is unnecessary to dwell, no appointment of commissioner has up to the present time been made by the Government of the United States, and I am now instructed again to press the matter upon their earnest attention. Should it appear probable, however, that this proposal cannot be met by the Government of the United States without further difficulty or delay, I would again suggest the expediency of the adoption by both Governments of the

channel marked as the only known navigable channel by Vancouver as that designated by the treaty. It is true that the island of San Juan, and *perhaps some others* of the group of *small* islands by which the Bay of Georgia is studded, would thus be included within the British territory; on the other hand, it is to be considered that the islands in question are of very small value, and that the existence of *another navigable channel*, broader and deeper than that laid down by Vancouver, by the adoption of which some of these islands *might possibly* fall within the jurisdiction of the United States, is, according to the reports of the most recent navigators in that region, *extremely improbable;* while, on the other hand, the continued existence of a question of doubtful jurisdiction in countries so situated as Washington Territory and Vancouver's Island is likely to give rise to a recurrence of acts of a similar nature to those to which I have had the honour of calling your attention, and which I have no doubt would not be less deplored by the Government of the United States than by that of Great Britain.'

"From January 13th, 1848, to February 9th, 1856, at different times, Mr. Crampton, by direction of Lord Palmerston and the Earl of Clarendon, urged the adoption of Vancouver or Rosario Straits, upon the ground that it was the only known navigable channel at the time the treaty was adopted—the British Government taking it for granted, apparently, that the United States were perfectly ignorant of the existence and value of the group of islands between that channel and the Canal de Haro—and utterly ignoring the existence of the latter, the main channel bounding Vancouver's Island. The small islands are studiously depreciated as of 'little or no value;' and, by way of apology for proposing to take them on the British side of the boundary line, the United States are gravely informed that the only large and valuable island in the group, called 'Whidbey's,' would, *of course*, belong to them. A glance at the map will show the liberality of the British Government in leaving to the United States the island of Whidbey, and their motive for proposing naval

officers of *conciliatory character* as commissioners to mark the boundary.

"In my correspondence with Captain Prevost I repeatedly called his attention to the views of his Government, as expressed in Mr. Crampton's letter of January 13, 1848, in opposition to those which he brought forward at this late day; but I failed to draw any response from him on the subject, or even the slightest reference to the letter. Although Captain Prevost remained perfectly silent in regard to it, I had reason to believe that the spirit which dictated that letter still actuated the British Government, and, if I mistake not, the instructions which Captain Prevost received for his guidance embodied many of the details therein contained. It was not, however, until after our discussion had closed, and I had reached Washington, that I first saw Mr. Crampton's letter of February 9, 1856, to Mr. Marcy, written under the instructions of Her Majesty's Government, again pressing the matter of the water boundary upon the earnest attention of the United States Government, and again urging the adoption of Vancouver or Rosario States on the same grounds as those suggested in 1848, with the additional consideration, 'that the *existence* of *another navigable channel*, *broader* and *deeper* than that laid down by Vancouver is, according to the reports of the most recent navigators in that region, extremely improbable.' Independent of the old surveys of the Spanish navigators and Vancouver, and of the modern surveys of Wilkes and Kellet, proof to the contrary is furnished by the still more recent labours of the United States coast survey. In the years 1853 and 1854 the Canal de Haro and Rosario Straits, and their approaches, were resurveyed, and a chart of the same on a large scale was published, with the annual report of the Superintendent of the United States Coast Survey for the year 1854.

"It seems strange that the British Admiralty in 1856 should have been ignorant of this survey and chart, considering the watchfulness of the Hudson's Bay Company authorities on Vancouver's Island, the vigilance of Mr. Crampton at Washing-

ton, and the general dissemination of the coast survey reports. But whether the British Government were or were not in possession of the information the chart furnishes in relation to the two channels, the additional reason urged by Mr. Crampton for the prompt adoption of Vancouver's Channel is none the less an acknowledgment that the proof of the existence of a *broader* and *deeper* channel should definitively settle the question of the boundary.

"The survey referred to was made by direction of President Pierce, as will be seen by the accompanying copy of a letter by Mr. Marcy to the Secretary of the Treasury, dated June 2, 1853. I am not aware of the immediate cause of the survey, but as the British Government had, on the occasion of each new administration after Mr. Polk's, renewed the effort to have the water boundary settled by the adoption of Vancouver's Channel, I presume that Mr. Marcy's attention was also called to the subject by the British Government. There may be a letter from Mr. Crampton on file in the department written at that period, and, perhaps, other documents not hitherto published, explaining the action of the department at that time in relation to the boundary. Senate Document No. 251, Report Com., thirty-fourth Congress, first session, contains an estimate for a survey of the water boundary, transmitted by Mr. Marcy to Mr. Hunter, Chairman of the Finance Committee of the Senate, dated July 15, 1854; and also a communication to Mr. Mason, Chairman of Committee on Foreign Relations, dated February 18, 1856; by which it appears, that the President's annual message of 1855 recommended an appropriation for the survey of the northwest boundary.

"The present commission was authorised by act of Congress, August 11, 1856, and in the summer of 1857 met the British Water Boundary Commission at Vancouver's Island. In October of that year the joint commission convened at this place for the purpose o determining the boundary line between the continent and Vancouver's Island. The discussion ended in a disagreement as to the 'channel' through which the

boundary line should run from the Gulf of Georgia to the Straits of Fuca. The principal arguments and evidence on both sides of the question are referred to in the preceding pages. The correspondence embodying the whole discussion will show that the disagreement did not result from any inherent difficulty in the question, but from the assumption on the part of the British commissioner of an infallible interpretation of the treaty, by refusing to admit contemporaneous evidence of the intentions either of his own Government or that of the United States to have any weight with him.

"The contemporaneous evidence which I produced and exhibited to him to show the fallacy of his interpretation of the treaty and the correctness of mine, to say the least, proved his interpretation to be a studied misconstruction of the word 'southerly,' (so as to exclude the Canal de Haro from the terms of the treaty,) and a disingenuous inversion of the real meaning of 'the channel which separates the continent from Vancouver's Island,' to secure the group of islands between the Canal de Haro and Rosario Straits to the British Government.

"Up to the period of the meeting of the joint commission, the Canal de Haro and Rosario Straits were the only channels that had ever been mentioned in connection with the question of the boundary; but before I left Washington for this coast, in the spring of 1857, in an interview I had with Lord Napier, I saw an indication that another channel, in the shape of an 'amicable compromise,' was likely to be proposed before the matter was settled. I was, therefore, not altogether unprepared, however much reason I might have had to be surprised, when Captain Prevost, having failed to convince me of the infallibility of his interpretation of the treaty and the utter worthlessness of my own (wishing it at the same time to be 'distinctly understood' that he was 'induced thereto by no change of opinion on any one point') announced that he conceived it had become 'our positive, as well as our conscientious duty, to endeavour, in a conciliatory spirit and by mutual concession, to settle the matter.' Having seen '*a way*

by which' he could, 'in part, meet my views without any gross violation of the terms of the treaty,' he proposed that we should consider the whole space between the continent and Vancouver's Island '*as one channel*,' and run the line '*through the "middle" of it*, in so far as islands will permit.' In submitting the proposition he says: 'I make the present offer without committing either my Government or myself, or any any other person, to a renewal of it at any subsequent period, should it not now be accepted.' It is unnecessary to say that I declined entertaining such a proposition. I have reason to believe that the offer, in some form or other, will be renewed by the British Government, notwithstanding the threatened penalty in the event of a non-compliance on my part. It is not at all improbable that a new reading of the treaty will be resorted to, by which the *whole* space between the continent and Vancouver's Island will be interpreted to be 'the channel which separates the continent from Vancouver's Island.'

"If the British Government should propose to the United States such a reading of the treaty, it would be with the view of securing possession of the island of San Juan, and of destroying the unity of the group of islands so important to the United States in a military point of view. If, however, the 'generally-admitted principle' in regard to the *main* channel be adhered to, the line would still run, as heretofore claimed by the United States, through the Gulf of Georgia and Canal de Haro, the two channels which, in connection, constitute the main channel between the forty-ninth parallel and the Straits of Fuca, and on such a condition there might *appear* to be no objection to adopting the whole space between the conti. nent and Vancouver's Island as 'the channel' of the treaty.

"But there is another view of the question to be taken into consideration before adopting this reading of the treaty. Even though the line may be carried through the middle of the Gulf of Georgia and Canal de Haro, whether the whole space or a particular channel be considered 'the channel' of the treaty, there may be some difference in the effect of the *proviso* to the first article, according to the interpretation to be

placed upon '*the channel*.' The proviso declares 'that the navigation of the *whole of the said channel* and straits south of the forty-ninth parallel of north latitude remain free and open to both parties.'

"Had Rosario Straits been agreed to by the United States, and adopted as 'the channel' of the treaty, there can be no doubt that the British Government would have so construed the proviso as to confine the navigation of American vessels to that particular channel; and a similar construction of the proviso I presume will be applied by the United States to British vessels, if the Canal de Haro be adopted as 'the channel.'

"If, however, the whole space between the continent and Vancouver's Island be considered 'the channel which separates the continent from Vancouver's Island,' under the proviso the navigation of the whole of its waters will be 'free and open to both parties.' And, according to the views of the British Government, as recently indicated by the British commissioner at a meeting of the joint commission, every harbour, cove, and inlet on the continental side of 'the channel' and straits may be claimed as part of 'the channel,' and consequently 'free and open to both parties.'

"I transmit herewith a copy of the record of the proceedings of the meeting referred to, which was convened for the purpose of definitively fixing and marking, by suitable monuments, certain important points, therein specified, at and near the western terminus of the boundary line on the continent, viz.: (1)—

"1st. The point where the forty-ninth parallel strikes the western coast of the continent or the eastern shore of the Gulf of Georgia, on the small peninsula of Point Roberts, a few miles south of Fraser's River.

"2d. The point where the forty-ninth parallel strikes the eastern shore of Point Roberts or western shore of Simiahmoo Bay, about three miles east of the first point.

"3d. The point where the forty-ninth parallel strikes the

(1) *Ante* pp. 154, 155.

eastern shore of Simiahmoo Bay, fifteen miles east of the first point.

"Captain Prevost expressed his readiness to adopt the points as determined by the astronomers of the joint commission; but when I proposed to mark the *first point* as the *initial point* of the land and water boundary, it being the common point where the forty-ninth parallel intersects the western coast of the continent and the eastern shore of the *channel* which separates the continent from Vancouver's Island, Captain Prevost 'declined entering into any discussion as to which was or was not the initial point,' on the ground, as he stated verbally, that the whole question of *the channel* was now in the hands of his Government. Notwithstanding the reserve of Captain Prevost, enough transpired at the meeting to disclose the pretence of the British Government that the eastern shore of Simiahmoo Bay, *on the forty-ninth parallel*—entirely within the continent, and fifteen miles from its western coast—is the eastern shore of 'the channel which separates the continent from Vancouver's Island.' While Captain Prevost's refusal to agree to an initial point hinged upon the question of 'the channel,' I could not agree to any joint determination of the points in question.

"The principal motive of the British Government in attempting to push the initial point of the water boundary fifteen miles to the eastward of its true position is, I presume, to bring 'the middle of the channel' (the western termination of the boundary line on the forty-ninth parallel, and its deflection, 'thence southerly' down the channel) as far from Vancouver's Island as possible, in the event of their being successful in obtaining the consent of the United States to consider the whole space between it and the continent as the channel of the treaty. The *middle* of the channel in such case would be brought at the forty-ninth parallel, some miles nearer the continent. It is more than probable, however, that they are not uninfluenced by the increased privileges which they would acquire under the proviso by this wide construction of 'the channel' at the forty-ninth parallel.

"Although there is no special reference in my instructions to the *proviso* of the first article, nor has it any *apparent* connection with the true determination of the boundary line, yet, as under the act of Congress authorising the organisation of the present commission, I am commissioned 'to carry into effect the *first article* of the treaty of June, 1846,' I deem it my duty to keep its terms in view in consideration of its intimate connection with the subject of 'the channel' in all its bearings, and of its susceptibility to a latitudinous construction by the British Government, always on the alert to take advantage of the vagueness or generality of the terms of a treaty.

"If the views of the British Government in relation to the extent of 'the channel,' as developed in regard to it at this parallel, should be considered as tenable and be adopted by the United States, as far as I can judge all the inland waters between the continent and Vancouver's Island, south of the forty-ninth parallel, including all their arms and branches as far south as Puget Sound, would be free and open to the navigation of British vessels. Of course the harbours on Vancouver's Island (few in number) would be equally open to the navigation of American vessels.

"Whether such is the object the British Government have in view in the point they are disposed to make in regard to Simiahmoo Bay, I am unable to say; but from the caution manifested by the United States in the correspondence between Mr. Buchanan and Mr. McLane, on the subject of 'free and open ports,' I do not think such a liberal interchange of ports would be in accordance with their views and policy. The debate between yourself and Mr. Benton on this very proviso indicates your apprehensions that Great Britain would construe it so as to exclude American vessels from the free and open navigation of the waters north of the parallel, so as to prevent free egress and ingress to and from the ocean in that direction. I have not a copy of your remarks at present with me, and do not recollect how far they touched upon any other question than that great right of navigating throughout its whole extent a public channel like that between the continent and Vancouver's Island.

"The 'offer' made to me by Captain Prevost to consider the whole space between the continent and Vancouver's Island *as one channel*, and to run the line *through the middle of it*, in so far as islands will permit, when brought to plain terms, is a proposition to divide the group of islands east of the Canal de Haro between the United States and Great Britain, so as to secure to the latter the island of San Juan. In accomplishing such a division of the rightful territory of the United States, the boundary line would run from the forty-ninth parallel through the Gulf of Georgia, through a part of the Canal de Haro and through the channel east of San Juan Island. The line on one of the accompanying sketches of the Admiralty(1) chart indicates the proposed compromise channel the British Government have so much at heart, and which will probably be again proposed to the United States. Independent of the preposterousness of such a proposition in other respects, it is not a suitable channel for a boundary between the United States and Great Britain, with such channels as the Canal de Haro and Rosario Straits in its vicinity. The relative widths of the channels are as follows:—

"The maximum width of the Canal de Haro, about 6½ miles.
The maximum width of Rosario Straits, about . . 4 ,,
The maximum width of San Juan Channel, about . 2 ,,
The minimum width of Canal de Haro about . . 2¼ ,,
The minimum width of Rosario Straits, about . . 1¼ ,,
The minimum width of San Juan Channel, about . ⅝ ,,

"All of these channels are deep; the Canal de Haro being much the deepest. Rosario Straits has at its northern entrance, directly in the way of a boundary line, a large shoal, the least water about three fathoms. It has been the great object of the British Government and Hudson's Bay Company to secure the island of San Juan, perhaps as much to keep the United States at a distance from Vancouver's Island as for the intrinsic worth of the island itself; though it is valuable, and by far the finest in the group. It has an area of about fifty-five square

(1) This sketch was not published. The compromise channel will be seen on reference to the large map presented with this volume.

miles; and it has an excellent harbour at its south-east corner. The great value of the group of islands, however, consists in its strong military position. It is the key to the Gulf of Georgia, north, and Straits of Fuca south of it. But a division of the sovereignty of the islands would destroy their military importance. Without San Juan the remainder of the group would be comparatively unimportant to the United States. The possession of it by Great Britain would answer all their purposes, and they would willingly give up the rest of the group for that single island.

"Mr. Bancroft, in his letter of August 4, 1848, mentions a conversation with Lord Palmerston, in which the latter 'spoke of the propriety of settling definitively the ownership of the several islands [between the continent and Vancouver's island], in order that settlements might not be begun by one party on what properly belonged to the other.'

"In Senate Document No. 251 (hereinbefore referred to) will be found a letter from Governor Stevens to Governor Douglas, dated May 12, 1855, acknowledging the receipt of a communication from the latter, in which is found the following paragraph:—

"'You say the "island of San Juan has been in the possession of British subjects for many years, and it is, with the other islands in the Archipelago de Haro, declared to be within the jurisdiction of the colony, and under the protection of British laws. I have also the order of Her Majesty's ministers to treat those islands as parts of the British dominions."'

"I do not know at what period Governor Douglas received these orders, nor whether they were communicated to the United States by the British Government. As nearly as I have been able to learn, the island of San Juan was first occupied in 1852, by the Hudson's Bay Company, as a sheep pasture, with an agent and a few shepherds to take charge of the property. Previously there was an Indian fishery on the island, probably under the control of the Hudson's Bay Company.

"The laws of Oregon and Washington Territories include

these islands within their jurisdiction, and some Americans settled upon San Juan in 1853; but feeling insecure from Indian attacks they soon withdrew. A deputy collector of the United States has resided on the island during a part of the time, and is there now. By reference to Senate Doc. No. 251, it will be seen that in 1855 a collision of jurisdiction took place. The sheriff of Whatcom county levied taxes upon the Hudson's Bay Company's property, which the agent refused to pay, on the ground of his being a British subject, acknowledging no authority except that emanating from his own Government. The property was seized and sold for the payment of the taxes; and a claim for damages is now before the department, amounting to near three thousand pounds. I append herewith an extract from a report of Captain Alden, United States Navy, to the Superintendent of the Coast Survey, in 1853, by which it will be seen that as early as July, 1853, Governor Douglas assumed authority over Lopez Island, one of the Haro Group (1). Until the line is definitively settled there is a constant liability to collisions of jurisdiction.

"The first step in the encroachments of the British Government upon this part of the territory of the United States, if Mr. Bancroft be correct in his supposition, originated in the desire of the Hudson's Bay Company to possess these islands. The decided position taken by him in regard to the Canal de Haro for a time checked any attempt on the part of the British Government positively to claim Rosario Straits as the boundary. With much caution, and by careful approaches, this was at length attempted in 1848, but failed. The Government then, it seems, gave orders to Governor Douglas to consider the group of islands as part of the British dominions.

"In a previous part of this communication, I referred to the fact that the maps of the north-west coast, extant at the date of the treaty, represented that part of the space between the continent and Vancouver's Island, immediately north and south of the forty-ninth parallel, as free from islands, and, consequently, with but *one channel;* and called attention to the maps of a

(1) American State Papers, p. 87. I have not reproduced this extract, its purport is as above stated.

later date, on which the coast of Vancouver's Island is thrown further to the west, and an extensive archipelago substituted.

"The chart of the Coast Survey published in 1854 is intended to represent the whole space between the continent and Vancouver's Island, in the vicinity of and south of the forty-ninth parallel, but principally the Canal de Haro and Rosario Straits, and the neighbouring archipelago. In executing this survey for the State Department, it does not seem to have occurred to the officers of the Coast Survey to make an exploration of the archipelago along the coast of Vancouver's Island, immediately south of the forty-ninth parallel. Its existence was, however, then becoming known, and since the discovery of coal at Nanaimo, on Vancouver's Island, a short distance north of the forty-ninth parallel, the Hudson's Bay Company's vessels generally take one of the inner channels in going from and returning to Victoria, thereby saving a great distance, and avoiding rough seas. Captain Alden, in the *Active*, on one occasion passed through one of the inner channels from Nanaimo, connecting with the Canal de Haro, as they all do, at about latitude 48° 40′. The sketch of the archipelago he obtained from the Hudson's Bay Company (to which I have already referred) was probably made by the captains of the two small steamers, and other small vessels belonging to the Company, which for many years have navigated these waters. You will observe on the Coast Survey chart that the inner channel is designated a 'channel for small steamers,' probably from the fact that none but small steamers had then sailed through it, or from the indisposition of the Hudson's Bay Company to encourage the exploration of the archipelago. It has been the general impression hitherto that the interior navigation was not well adapted to vessels of a large size, and such was the impression when I first arrived here. Indeed, little or nothing appeared to be known about the islands or channels between them. There are probably difficulties in the way of large vessels getting out of the inner channel into the open gulf at the northern extremity, or at points between it and the Canal de Haro; the openings be-

tween the islands nearest the Gulf of Georgia being narrow and the currents very rapid. Nevertheless, upon the discovery of gold on Fraser River, steamers of good size found passages through those islands, in going from Victoria to the mouth of the river by the Canal de Haro, that saved considerable distance, and were convenient in avoiding rough weather in the open gulf. There is a passage (about two or three miles in length), almost due south from the 'middle of the channel' at the forty-ninth parallel, which would carry a line into the Canal de Haro, so as to obviate Captain Prevost's objection to the westerly bend in the course of the Canal de Haro at its northern extremity. But as the passage is narrow, less than half a mile wide, though perfectly safe and convenient, I did not think it a proper channel to propose for a boundary beween the United States and Great Britain, although its average width is very little less than the San Juan Channel at its entrance into the Straits of Fuca. With the exception of this passage, I had not, at that time, been within the archipelago, and had no further idea of the true character of its channels. The passage alluded to runs through what appears on the map as Saturna Island. I made a hurried exploration of the archipelago in the steamer *Active* in September last, and was surprised to find such wide and deep channels. The opening through which we emerged from the inner channel into the Gulf of Georgia, in the vicinity of the forty-ninth parallel, is not wide (about half a mile), and some years since, in passing through it, Her Majesty's steamer *Virago*, commanded by Captain Prevost, struck a rock. I saw enough, however, to satisfy me that the inner channels are sufficiently capacious for vessels of the largest size. I do not think there are any islands as large as some of those in the Haro Archipelago, but I may be mistaken. They are generally small, rocky, and barren, though highly picturesque in appearance. In the division of labour between the United States and British commissions, the survey of this archipelago devolved on the latter, and we found Captain Richards, with Her Majesty's surveying steamer *Plumper*, actively engaged upon it. He continued

the work until the rainy season set in and closed his operations for the year. This survey will give a new aspect to the map of this part of the space between the continent and Vancouver's Island, though probably it will not cover a greater number of square miles than the archipelago as laid down on the Coast Survey chart. The large islands as there represented will be broken up into smaller ones, and greatly increased in number. The island of Saturna will be divided into three or more islands, embracing a splendid harbour large enough to accommodate the navy of Great Britain. The passage connecting the Gulf of Georgia and the inner channel, through which we passed in the *Active* (which we named the 'Active Passage'), is between the small islands into which Saturna Island is disintegrated.

"Although a channel navigable for the largest vessels will undoubtedly be developed by the survey, it is not likely that it will, in all respects, be so situated as to answer the purposes of a boundary channel as well as the broad channel of the Gulf of Georgia, which averages twelve miles in width, at and south of the forty-ninth parallel. And yet if the letter of the treaty, and the motive which induced the departure of the boundary line from the forty-ninth parallel, be alone looked at, there can be no doubt that the inner channel may be claimed as the channel which separates the continent from Vancouver's Island, on the same ground with the Canal de Haro, viz., that it is the nearest channel to Vancouver's Island, and that the object of the line in the treaty was simply to avoid cutting off the southern end of Vancouver's Island, and to give the whole of it and its harbours, and nothing more, to Great Britain.

"But the Canal de Haro is not claimed alone on the ground of its being the nearest channel to the island; although a legitimate construction of the treaty, the evidence of Mr. McLane is added to support it. It is also the main channel, and, in connection with the Gulf of Georgia, constitutes the main channel from the forty-ninth parallel to the Straits of Fuca. This channel is the true and natural boundary between the continent and Vancouver's Island, and undoubtedly is the

channel understood between Mr. McLane and Lord Aberdeen, and intended in their general description of the line. Had the maps of that day represented the space between the continent and Vancouver's Island as it is now known, the Gulf of Georgia and Canal de Haro would have been designated by name in the treaty as the boundary channel, on the 'generally admitted principle' that they constitute the 'main channel,' although it would be conceding to Great Britain, in addition to 'Vancouver's Island and its harbours,' an extensive group of islands south of the forty-ninth parallel.

"At the time they agreed upon the line, they were ignorant of, or at least our Government was ignorant of the existence of the archipelago in the vicinity of the forty-ninth parallel and immediately south of it. It, therefore, would be questionable policy to claim the channel west of the Gulf of Georgia. It would weaken the position already taken in regard to the main channel, though it may be brought with much force as an argument against the British Government, who, without the slightest show of right, have claimed the channel nearest the continent, and all the islands west of it, in the very face of the letter and spirit of the treaty; while the United States, in their attempts to carry the treaty into effect, have waived the rigid construction of the letter of the treaty, and even its plain and obvious meaning, by a liberal interpretation of it, as well as the intentions of the negociators, so as to make the *main channel* the boundary between the territories of the United States and Great Britain. In this respect the contrast between the course of the two Governments is most striking.

"I have the honour to be, very respectfully, your obedient servant,

"Archibald Campbell,

"Commissioner North-west Boundary Survey.

"Hon. Lewis Cass, Secretary of State."

Mr. Campbell annexed to his letter the following (amongst other) Enclosures :—

(Enclosure A.)

"*Copy of Proposition for Partition of the Oregon Territory, &c.*

"The following is a copy of the proposition for a partition of the Oregon territory, in so far as regards the boundary line, which Lord Aberdeen authorised Mr. Pakenham to submit to the United States in his instructions of May 18, 1846, as written down from memory shortly after a careful perusal of the original in the archives of the British legation :—

"'The forty-ninth parallel to the sea-coast, thence in a southerly direction through the centre of King George's Sound and the Straits of Fuca to the ocean—*thus giving to Great Britain the whole of Vancouver's Island and its harbours.*'

"In a despatch of the same date (May 18, 1846) from Mr. McLane to Mr. Buchanan, the foregoing proposition is referred to and communicated as follows :—

"'The proposition most probably will offer substantially—

"'First—To divide the territory by an extension of the line on the parallel of forty-nine to the sea—that is to say, the arm of the sea called Birch's Bay ; thence by the Canal de Haro and Straits of Fuca to the ocean, and confirming to the United States (what indeed they would possess without any special confirmation) the right freely to use and navigate the strait throughout its extent."

(Enclosure B.)

"ANALYSIS OF THE FIRST ARTICLE OF THE TREATY.

"*Analysis of the First Article of the Treaty, by a comparison of its terms with the terms of the Proposition contained in the Instructions of Lord Aberdeen to Mr. Pakenham, and the terms of the same Proposition, as stated in Mr. McLane's Despatch to Mr. Buchanan of the same date (May 18, 1846).*

"*Boundary Line as laid down in the First Article of the Treaty of June 15, 1846.*	*Boundary Line as described by Lord Aberdeen's Proposition, May 18, 1846.*	*Proposition of Lord Aberdeen in regard to Boundary Line, as described by Mr. McLane, May 18, 1846.*
"FORTY-NINTH PARALLEL TO THE middle of *the channel which separates the continent from Vancouver's Island,* and THENCE SOUTHERLY THROUGH THE MIDDLE OF *the said channel* AND OF FUCA'S STRAITS TO THE PACIFIC OCEAN.	FORTY-NINTH PARALLEL TO THE *sea* coast. THENCE IN A SOUTHERLY DIRECTION THROUGH THE CENTRE OF *King George's Sound* AND THE STRAITS OF FUCA TO THE OCEAN—*thus giving to Great Britain the whole of Vancouver's Island and its harbours.*	PARALLEL OF FORTY-NINE TO THE *sea*—that is to say, the *arm of the sea called Birch's Bay;* THENCE BY the *Canal de Haro* AND STRAITS OF FUCA TO THE OCEAN,
"PROVIDED, HOWEVER, THAT THE NAVIGATION OF THE WHOLE OF SAID CHANNEL AND STRAITS *south of the forty-ninth parallel of north latitude* REMAIN FREE AND OPEN TO BOTH PARTIES.		AND CONFIRMING TO THE UNITED STATES (*what indeed they would possess without any special confirmation*) THE RIGHT FREELY TO USE AND NAVIGATE THE STRAIT THROUGHOUT ITS EXTENT.

"NOTE.—The words of the treaty describing the boundary line, and those of Lord Aberdeen and Mr. McLane, are in SMALL CAPITALS when they are identical, or nearly so, and in *italics* when they differ but have the same meaning, viz., the channel nearest Vancouver's Island. The language of the proviso and of the statement of its conditions by Mr. McLane is in SMALL CAPITALS, so far as it may be considered identical in meaning. Where they *appear* to differ in that respect it is in *italics.* It will be observed that Mr. McLane uses the comprehensive word 'strait,' covering the entire length of the navigable space between Vancouver's Island and the continent, from ocean to ocean, and such undoubtedly was the understanding between himself and Lord Aberdeen of the conditions that were to be introduced into the proviso.

"A. C."

"*Correspondence showing the Early Pretensions of the British Government to the Islands east of the Canal de Haro.*

(Enclosure C.)

"Mr. Boyd to Mr. Buchanan.

"London, October 19, 1846.

"SIR,—Through channels not strictly official, yet I conceive entitled to implicit reliance, it has recently come to my knowledge that an idea is entertained of certain British subjects of founding a settlement upon Whidbey's Island, one of the islands situated within the Straits of Fuca, south of the forty-ninth parallel. Whether formal application has yet been made to Government for its sanction, I am not informed, but there can be little doubt that Government has been led to expect such an application, and in this expectation has been thrown into some doubt whether, according to the boundary described in the late Oregon treaty, viz., the mid channel through the Straits of Fuca, Whidbey's Island would fall within British or American jurisdiction.

"Being unauthorised to pursue this subject officially, and obliged, even unofficially, to approach it in a very distant and cautious manner, I am unable to ascertain who are the parties proposing the settlement in question, what would be its nature and objects, or whether the position of Whidbey's Island would render its possession a matter of military or political importance.

"I deem it proper, however, to mention the supposed possibility that the ascertainment of the main channel through the Straits of Fuca may be a matter of some doubt, in order that if the department be not already in possession of evidence clearly defining this line, it may take the occasion through our cruisers in those seas, or otherwise, at once to collect, if desirable, such information as to meet the question whenever it may be formally presented.

"It may not be improper, moreover, to report certain inferences from the conversations in which this subject was brought to my notice which it was probably intended I should

draw, and expected that I should communicate. The conviction was left upon my mind that the proposed settlement of Whidbey's Island is a scheme altogether of private origin, and one which her Majesty's ministers rather unwillingly find forced upon their attention; that they would deeply regret the occurrence of any difficulty in tracing the channel of the Strait of Fuca, would gladly adopt *any* suitable mode for its ascertainment, and would care much less about the distribution of the small islands in that sea than for the prompt establishment of the treaty line. (1)

"I was also led to believe that a ready disposition on the part of our Government, now that a point presents itself which is one of mere fact and science, to submit its solution to a proper professional tribunal, might very much serve to correct the unfair interpretation recently put upon the President's refusal to submit to arbitration in a question not suitable for that mode of decision.

"I remain, sir, very respectfully, your obedient servant,

"J. McHenry Boyd.

"Hon. James Buchanan, Secretary of State.

(Enclosure D.)

"Mr. Bancroft to Mr. Buchanan.

"London, November 3, 1846.

"Sir,— * * * *

While in the Navy Department I caused a traced copy of Wilkes's chart of the Straits of Haro to be made. If not needed in the Navy Department I request that the President will direct it to be sent to this legation. It is intimated to me that questions may arise with regard to the islands east of that strait. I ask your authority to meet any such claim at the threshold by the assertion of the central channel of the Straits of Haro as the main channel intended by the recent treaty of Washington. Some of the islands, I am well informed, are of value. Very respectfully, your obedient servant,

"George Bancroft.

"Hon. James Buchanan, Secretary of State."

(1) I would call attention to these remarks, as showing that Mr. Campbell was not justified in imputing sinister motives to the Ministers of Great Britain in their conduct of this question.

(Enclosure E.)

"Mr. Buchanan to Mr. Bancroft.

"Department of State, Washington, December 28, 1846.

"SIR,—I have obtained from the Navy Department, and now transmit to you, in accordance with the request contained in your despatch No. 1 [November 3], the traced copy of Wilkes's chart of the Straits of Haro. This will enable you to act understandingly upon any question which may hereafter arise between the two Governments in respect to the sovereignty of the islands situate between the continent and Vancouver's Island. It is not probable, however, that any claim of this character will be seriously preferred on the part of Her Britannic Majesty's Government to any island lying to the eastward of the Canal of Arro, as marked in Captain Wilkes's 'Map of the Oregon Territory.' This, I have no doubt, is the channel which Lord Aberdeen had in view, when, in a conversation with Mr. McLane, about the middle of May last, on the subject of the resumption of the negotiation for an amicable settlement of the Oregon question, his Lordship explained the character of the proposition he intended to submit through Mr. Pakenham. As understood by Mr. McLane, and by him communicated to this department in his despatch of the 18th of the same month, it was, 'First, to divide the territory by the extension of the line on the parallel of 49° to the sea—that is to say, to the arm of the sea called Birch's Bay—thence by the *Canal de Haro* and Straits of Fuca, to the ocean,' &c.

"I am, Sir, respectfully, your obedient servant,

"JAMES BUCHANAN.

"George Bancroft, Esq., &c., &c.

"[Enclosure: Chart of the Straits of Juan de Fuca, Puget Sound, &c. By the U. S. Ex. Ex., 1841.] (1)

(Enclosure F.)

"Mr. Bancroft to Mr. Buchanan.

"Legation of the United States, London, March 29, 1847.

"SIR,— * * * * * *

"While on this point I ought to add that my attention has

(1) American State Papers, p. 61.

again been called to the probable wishes of the Hudson's Bay Company to get some of the islands on our side of the line in the Straits of Fuca. I speak only from my own judgment and inductions from what I observe and hear; but it would not surprise me if a formal proposition should soon be made on the part of the British Government to run the line between the two countries at the west from the point where it first meets the water through the straits to the Pacific Ocean.

"Such a proposition is in itself very proper, if there be no ulterior motive to raise unnecessary doubts and to claim islands that are properly ours. The Ministry, I believe, has no such design. Some of its members would be the first to frown on it. But I am not so well assured that the Hudson's Bay Company is equally reasonable, or that on the British side a boundary commissioner might not be appointed favouring the encroaching propensities of that Company.

* * * * * * *

"I am, &c.,

"GEORGE BANCROFT.

"James Buchanan, Esq., &c., &c., &c.,
"Washington City.

(Enclosure G.)

"Mr. Bancroft to Mr. Buchanan.

"United States Legation, London, August 4, 1848.

"SIR,— * * * * * *

"The Hudson's Bay Company have been trying to get a grant of Vancouver's Island. I inquired, from mere curiosity, about it. Lord Palmerston replied that it was an affair that belonged exclusively to the Colonial Office, and he did not know the intentions of Lord Grey. He then told me what I had not known before, that he had made a proposition at Washington for marking the boundaries in the north-west by setting up a landmark on the point of land where the forty-ninth parallel touches the sea, and for ascertaining the division

line in the channel by noting the bearings of certain objects. I observed that on the mainland a few simple astronomical observations were all that were requisite; that the water in the channel of Haro did not require to be divided, since the navigation was free to both parties; though, of course, the islands east of the centre of the channel of Haro were ours. He had no good chart of the Oregon waters, and asked me to let him see the traced copy of Wilkes's chart. He spoke of the propriety of settling definitively the ownership of the several islands, in order that settlements might not be begun by one party on what properly belongs to the other. On returning home I sent him my traced copy of Wilkes's chart, with the note of which I enclose a copy.

"I am, &c., "GEORGE BANCROFT.

"James Buchanan, Esq.,
"Secretary of State, Washington, D.C.

(Enclosure H.)

"Mr. Bancroft to Lord Palmerston.

"90, Eaton Square, July 31, 1848.

"MY DEAR LORD,—As your Lordship desired, I send for your inspection the traced copy made for me at the Navy Department of Wilkes's chart of the Straits of Juan de Fuca, Puget's Sound, &c., &c. Unluckily this copy does not extend quite so far north as the parallel of 49°, though it contains the wide entrance into the Straits of Haro, the channel through the middle of which the boundary is to be continued. The upper part of the Straits of Haro is laid down, though not on a large scale, in Wilkes's map of the Oregon Territory, of which, I am sorry to say, I have not a copy, but which may be found in the atlas to the narrative of the United States Exploring Expedition.

"I remain, my dear Lord, very faithfully yours,

"GEORGE BANCROFT.

"Viscount Palmerston, &c., &c.

(Enclosure I.)

"Mr. Bancroft to Mr. Buchanan.

"United States Legation, London, October 19, 1848.

"SIR,—I send you a map of Vancouver's Island, recently published by James Wyld, geographer to the Queen. It purports to mark by a dotted line the boundary between the United States and Great Britain. You will see that this map suggests an encroachment on our rights by adopting a line far to the east of the Straits of Haro. You may remember that Mr. Boyd, more than two years ago, suggested to you that a design of preferring some such claims existed.(1) I inferred, from what I could learn at that time, that this design grew up with the Hudson's Bay Company, and I had no reason to suppose it favoured by the Colonial Secretary.

* * * * * * *

"I am, &c., "GEORGE BANCROFT.

"James Buchanan, Esq.,
"Secretary of State, Washington.

(Enclosure J.)

"Mr. Bancroft to Lord Palmerston.

"108, Eaton Square, November 3, 1848.

"MY LORD,—I did not forget your Lordship's desire to see the United States surveys of the waters of Puget Sound and those dividing Vancouver's Island from our territory.

"These surveys have been reduced, and have just been published in three parts, and I transmit for your Lordship's acceptance the first copy which I have received.

"The surveys extend to the line of 49°; and, by combining two of the charts, your Lordship will readily trace the whole course of the Channel de Haro, through the middle of which our boundary line passes. I think you will esteem the work done in a manner very creditable to the young navy officers concerned in it. "I have the honour, &c.,

"GEORGE BANCROFT.

(1) See letter of Mr. Boyd to Mr. Buchanan, 19th October, 1846, *ante*, p. 208.

(Enclosure K.)

"Lord Palmerston to Mr. Bancroft.

"Foreign Office, November 27, 1848.

"SIR,—I beg leave to return to you my best thanks for the surveys of Puget's Sound and of the Gulf of Georgia, which accompanied your letter of the 3rd instant.

"The information as to soundings contained in those charts will no doubt be of great service to the commissioners who are to be appointed under the treaty of the 15th of June, 1846, by assisting them in determining where the line of boundary described in the first article of that treaty ought to run.

"I have the honour to be, with high consideration, sir, &c.,

"George Bancroft, Esq." "PALMERSTON.

On the 14th of June, 1859, Mr. Campbell addressed a letter to Mr. Cass, the language of which appears to justify in some measure the charge subsequently made against him by British residents in Victoria, that he had instigated the violent proceedings on the part of General Harney which I am about to describe.

"United States North-west Boundary Commission, (1)

"Camp Simiahmoo, June 14, 1859.

"SIR,—I regret to be obliged to inform the department that no further progress in the determination of the water boundary has been made since the proceedings of the 3rd of December, 1857, when, after a full discussion of the question, Captain Prevost, upon a fictitious issue of disagreement between us as to the meaning of the words of the treaty defining the boundary between the continent and Vancouver's Island, proposed a reference of the whole matter to our respective Governments. As I did not concur in this proposal, for reasons which are obvious, whatever reference Captain Prevost may have made to his Government was made upon his own responsibility. And it seems to me that, after the

(1) American State Papers, p. 88.

lapse of eighteen months, he should be instructed by his Government either to adopt the boundary channel according to my interpretation of the treaty, sustained by contemporaneous evidence showing it to be in accordance with the intention of the negotiators, or be provided with counter evidence of equal weight to sustain the correctness of his remarkable construction of the language of the treaty.

"Captain Prevost's studious avoidance of the production of *any* evidence showing the understanding of his Government as to the boundary channel intended by the treaty, his repudiation of that which I laid before him, proving the absurdity of his interpretation, and his blind adherence to the mere letter of the treaty as he chooses to construe it, taken in connection with his proposal to split the difference between us by a division of the group of islands (artfully involved in dispute), is the very best evidence that his Government have not the shadow of foundation for claiming the boundary channel he professes to derive from the 'very peculiar wording' of the treaty.

"I have recently learned from Captain Prevost that he has not received any instructions from his Government upon the subject of the reference made by him 'on account of the contrary views entertained by us,' nor is he aware when it is probable that he may receive instructions.

"Several citizens of the United States have recently settled on San Juan Island, one of the disputed islands, and the nearest to Vancouver's Island. As the Hudson's Bay Company also occupy it, difficulties may be anticipated if the question of the boundary channel be not speedily settled. I would therefore respectfully urge upon the department the importance of calling the attention of the British Government to the subject.

"I have the honour to be, very respectfully,

"Your obedient servant,

"ARCHIBALD CAMPBELL,

"Commissioner North-west Boundary Survey.

"Hon. Lewis Cass, Secretary of State."

A few days after writing this letter, the United States Commissioner again wrote to Mr. Cass, and enclosed the map, a copy of which is annexed to this volume. The letter was as follows :(1) —

"Camp Simiahmoo, June 21, 1859.

"Sir,—In my letter to the department of the 20th of January, I referred to the fact that the channels and islands composing the archipelago skirting Vancouver's Island at and immediately south of the forty-ninth parallel had never been accurately laid down on the maps representing the space between the continent and Vancouver's Island, and stated that Captain Richards, Royal Navy, surveyor of the British water boundary commission, had recently been engaged in making a survey of this archipelago, and that as soon as I was furnished by him with a copy of his map I would forward to the department a tracing of the Coast Survey chart corrected in that particular, and I now have the honour herewith to transmit it accordingly.

"I also stated that a general impression had been created that the channels of the archipelago were only navigable for small steamers. It will be seen by the soundings laid down in the accompanying chart, that this is an erroneous idea, and that they are navigable for vessels of the largest class. In respect to navigability merely, they are therefore on an equality with the channels claimed or proposed as 'the channel' through which the boundary line should be run; while in other respects, with the exception of the *main channel*, the channel of the archipelago *nearest to Vancouver's Island* has the first claim to be considered 'the channel which separates the continent from *Vancouver's* Island.'

"At the time the treaty was concluded the archipelago at the forty-ninth parallel was represented on the maps of that day as a part of Vancouver's Island, and, consequently, at and immediately south of the forty-ninth parallel to about latitude

(1) American State Papers, p. 88.

48° 47′ there appeared to be but a single channel between the continent and Vancouver's Island. The line contemplated by the negotiators of the treaty must therefore necessarily have been through the middle of that channel (the Gulf of Georgia) until it reached the Archipelago de Haro, not, as asserted by Captain Prevost in his letter of October 28, 1857, to be 'the fact that at the forty-ninth parallel there is only *one* navigable channel lying between the channel and Vancouver's Island,' but because only one was known to exist at and prior to the date of the treaty. This assertion of Captain Prevost is the more remarkable, considering that in 1853 he, to some extent, explored the channels of the archipelago west of the Gulf of Georgia; and the name of the steamer, *Virago*, which he commanded at the time, is indelibly connected with a passage from the Gulf of Georgia to the inner channels near Vancouver's Island. In passing through what the early Spanish navigators named 'Portier's Inlet,' a little north of the forty-ninth parallel, the steamer encountered a rock, which created some apprehensions for her safety. On the Coast Survey chart the inlet is designated by 'Virago Rock,' and is generally spoken of as Virago Passage.

"The maps in use by the negotiators of the treaty represented the Archipelago de Haro with sufficient accuracy to show that there were several channels connecting the Gulf of Georgia and Straits of Fuca. The literal meaning of the treaty would indicate the boundary channel to be the nearest channel to Vancouver's Island, and it has been satisfactorily proven that such was the intention of the negotiators by the production of contemporaneous evidence, showing the object of the deflection of the boundary line from the forty-ninth parallel to be merely to give the whole of Vancouver's Island to Great Britain, with the undeniable understanding of both Governments that, to accomplish this object, the boundary line was to reach the Straits of Fuca through the Canal de Haro. The despatches of Mr. McLane and Lord Aberdeen of May 18, 1846, alone, are sufficient confirmation of this fact; but they are amply sustained by other contemporaneous evi-

dence. Mr. McLane mentions the name of the channel nearest Vancouver's Island (the Canal de Haro), where more than one was known to exist, without specially stating the object of its selection. Lord Aberdeen specifies distinctly the object, viz., 'to give to Great Britain the whole of Vancouver's Island and its harbours,' without naming the channel which would accomplish it.

"Before I entered into the discussion of the boundary question with the British commissioner, the language of the treaty seemed to me to be susceptible of two distinct interpretations, either that 'the channel which separates the continent from Vancouver's Island' meant the nearest navigable channel to Vancouver's Island, without regard to its relative size, or that it might mean the *main channel* between the continent and Vancouver's Island.

"A careful investigation of the subject, with all the light thrown upon it by the contemporaneous evidence I then possessed, led me to the conclusion that a combination of these two interpretations would best enable me to carry the treaty into effect, in accordance both with its letter and spirit.

"My conclusion was that the Gulf of Georgia and the Canal de Haro constituted the boundary channel understood and intended by the framers and signers of the treaty. If the true interpretation of the treaty be that 'the channel' through which the boundary line is to be run is the main channel, the line I have claimed is then the line intended by the treaty. If, however, 'the channel which separates the continent from Vancouver's Island' is to be construed as the nearest channel to Vancouver's Island, the line should be run so as to throw the archipelago, west of the Gulf of Georgia, on the American side of the line.

"In admitting the Gulf of Georgia to be 'the channel' intended by the treaty, between latitude 49° and 48° 47′, I did so with some reluctance, as I considered the principle upon which the water boundary was established to be merely to avoid cutting off the southern end of Vancouver's Island, so as to give the whole of the island to Great Britain, and no more.

But as the channel within the archipelago, at the forty-ninth parallel nearest Vancouver's Island, was not considered well adapted to a boundary channel, and, indeed, was little known, I took the broad view, as the Gulf of Georgia was the main channel, and as at the time of the treaty but one channel was known to be in existence, that I should be carrying the treaty into effect in good faith towards my own Government, and most liberally towards Great Britain, by ignoring the archipelago, so as to place myself in the position of the negotiators of the treaty when they had the maps of the day before them.

"The refusal of the British commissioner to adopt the Gulf of Georgia and the Canal de Haro as the boundary channel, together with the additional contemporaneous evidence I have gathered since my discussion with him in 1857, has caused me carefully to review the conclusion at which I had arrived at that time. I still am of the opinion that if the boundary line had been drawn upon the maps of the day, immediately after the conclusion of the treaty, that it would have been drawn through the Gulf of Georgia and Canal de Haro. But the extraordinary pretensions of the British Government that the channel nearest the continent was contemplated by them as the boundary channel of the treaty, and the refusal of the British commissioner to be in the slightest degree influenced by contemporaneous evidence proving the contrary, it seems to me would justify the United States in claiming the boundary line through the channel nearest Vancouver's Island from the forty-ninth parallel to the Straits of Fuca.

"The Gulf of Georgia and Canal de Haro, constituting the main channel, is the natural boundary between the continent and Vancouver's Island, and by far the most convenient in every respect to both Governments. This boundary line carries British vessels from the Pacific Ocean to Fraser River, the nearest point of the British possessions on the continent with which they will have any communication, by a route seventeen miles shorter than by Rosario Straits, the channel they claim as the boundary; while between Simiahmoo Bay,

Bellingham Bay, and Puget Sound, Rosario Straits will be most convenient to American vessels. But between the Pacific Ocean and Point Roberts [American territory], the Canal de Haro is equally convenient for American vessels as it is for British vessels bound for Fraser River, a few miles north of it. In no point of view, however, is Rosario Straits necessary for British vessels, unless the Archipelago de Haro become British territory.

"The Canal de Haro being the only link in the boundary channel between the forty-ninth parallel and the Straits of Fuca, which has been proven by contemporaneous evidence, the question is upon what principle was the Canal de Haro understood to be 'the channel which separates the continent from Vancouver's Island?' It must have been either because it was the channel nearest to Vancouver's Island, or because it was the main channel. If the former, the archipelago skirting Vancouver's Island to the forty-ninth parallel belongs to the United States; if the latter, the Gulf of Georgia is the boundary channel, and this archipelago belongs to Great Britain. This group of islands is the only one about which any dispute could be got up with plausible show of fairness; and the liberality of the United States in proposing to adopt such a line as would give it to Great Britain, has hitherto prevented such a dispute and transferred it to the Haro group.

"Upon the accompanying map will be found the following lines traced through different channels, viz.:—

"1st. The boundary line contemplated by the treaty, as shown by contemporaneous evidence, through the middle of the Gulf of Georgia and Canal de Haro, the *main channel* between the continent and Vancouver's Island.

"2nd. The boundary line claimed by the British commissioner, through the Gulf of Georgia and Rosario Straits, on the pretence that 'the channel which separates the continent from Vancouver's Island' means the channel nearest to the continent.

"3rd. The boundary line proposed by the British commissioner as a compromise, through the Gulf of Georgia, a

part of the Canal de Haro, and the channel east of San Juan Island.

"4th. The boundary line which might be claimed by the United States in accordance with the letter of the treaty, or by adopting an interpretation of it so as to carry out the sole object of the deviation of the boundary line from the forty-ninth parallel to the ocean through the Straits of Fuca, viz., to give the whole of Vancouver's Island to Great Britain.

"5th. Track of steamers plying between Victoria and Fraser River since the discovery of gold.

"I have the honour to be, very respectfully,

"Your obedient servant,

"ARCHIBALD CAMPBELL,

"Commissioner North-west Boundary Survey.

"Hon. Lewis Cass, Secretary of State."

In the meantime, Mr. Campbell had, on the 18th of May, 1859, addressed a letter to Captain Prevost, stating that nearly eighteen months had elapsed since the last meeting of the commission, and further, as follows:(1)—

"I have the honour, very respectfully, to request you to inform me whether I am to expect any further communication from you in regard to the determination of the water boundary, and if so, at what period of time I may probably look for such communication."

To this Captain Prevost replied as follows:(2)—

"Her Britannic Majesty's ship *Satellite*, Esquimault,

"Vancouver's Island, May 27, 1859.

"SIR,—I have the honour to acknowledge the receipt of your letter of the 18th instant, referring to a meeting of the joint commission held upon the 3rd day of December, 1857,

(1) American State Papers, p. 108. (2) *Idem*, p. 109.

at which you state I proposed that a reference of the whole matter connected with the water boundary should be made by each commissioner to his Government, and as you did not concur in such proposal, and as eighteen months have elapsed without any subsequent proceedings, requesting to be informed whether you are to expect any further communication from me in regard to the determination of the water boundary.

"2. It seems to me that this letter conveys the implication that the delay which has taken place in the determination of the line of water boundary originated from my act, and now rests entirely with me. I therefore feel called upon, in justice to myself, to offer a few remarks, and to submit that a review of the facts connected with the question will show that the very opposite is the case.

"3. I am not unmindful that I made the suggestion for a reference of the matter in dispute between us to our respective Governments; and why did I do so? *Purposely to facilitate its settlement.*

"You objected to such reference, but for what reason I am not in a position to judge.

"4. It needs not that I should enter into any recapitulation of the correspondence that has passed between us. It suffices to say that from the exact wording and intrinsic evidence of the treaty, I formed a clear and fixed opinion as to the direction in which the line of water boundary to be determined between us should be carried. Nothing you advanced, nothing that transpired, shook that opinion in the slightest; on the contrary, the very argument you adduced, founded upon evidence which was *not* the treaty, only served to confirm my opinion and to establish me in my view as to its correctness. In such a case it would neither have been an unnatural nor unreasonable proceeding on my part, had I determined resolutely to adhere to the views I entertained, and not to depart one iota from the line which I then believed, which I now believe, to be the line of boundary established by the treaty; but, actuated by conscientious motives in fully recognising the importance of a speedy settlement of the matter, in possessing

the most earnest desire to effect that settlement, and in firmly believing that it was the province of the commissioners to adjust any disagreement, without reference, by mutual concession and forbearance, I frankly offered to meet you half-way if you would reciprocate in the same spirit. This conciliatory offer on my part you positively refused to entertain, and I therefore think I am justly absolved from the delay which has in consequence arisen.

"5. I would, with the utmost respect, wish to remind you that on the 16th August last a joint commission meeting was held, at which I expressed my readiness to concert certain measures which it was desirable should then be completed; but proceedings therein were again delayed, not from any desire on my part, but through your declining to act unless I deferred in toto to the views you entertained in connection therewith.

"6. In conclusion, I beg to acquaint you that I have not received any instructions from my Government upon the subject of the reference made by me on account of the contrary views entertained by us, nor am I aware when it is probable that I may receive instructions.

"Permit me to assure you of my consideration and esteem, and believe me to remain your most obedient and humble servant,

"JAMES C. PREVOST,
"Her Majesty's Commissioner, &c., &c.

"Archibald Campbell, Esq.,
"Commissioner on the part of the United States, &c., &c."

Mr. Campbell replied in the following terms: (1)—

"United States North-west Boundary Commission,
"Camp Simiahmoo, June 7, 1859.

"SIR,—I have the honour to acknowledge the receipt of your letter of the 27th ultimo, in reply to mine of the 18th. The object of my letter, as stated therein, was 'to request you

(1) American State Papers, p. 110.

to inform me whether I am to expect any further communication from you in regard to the determination of the water boundary; and if so, at what period of time I may probably look for such communication.'

"In reply thereto, you say, 'I beg to acquaint you that I have not received any instructions from my Government upon the subject of the reference made by me on account of the contrary views entertained by us, nor am I aware when it is probable that I may receive instructions.'

"As your reply does not contain the information I asked for, I have the honour again to call your attention to my inquiries, and very respectfully to request an explicit answer thereto.

"I have the honour to be, very respectfully, your obedient servant,

"ARCHIBALD CAMPBELL,
"United States Commissioner.

"Captain James C. Prevost, R.N.,
"British Commissioner, &c., &c., &c."

To which Captain Prevost rejoined: ([1])—

"Her Britannic Majesty's Ship *Satellite*, Esquimault,
"Vancouver's Island, June 23, 1859.

"SIR,—I have had the honour to receive your letter of the 7th instant, referring to a letter which you addressed to me on the 18th May last, and to my answer thereto, dated on the 27th May, of which you quote one paragraph, and then state that as such reply does not contain the information you asked for, you again beg to call my attention to your inquiries, and request an explicit answer.

"2. In return thereto, I beg very respectfully to refer you to my aforesaid letter of the 27th May, which, with every deference, I submit, when taken as a whole, conveys to you a very explicit answer to your communication of the 18th ultimo.

([1]) American State Papers, p. 110.

"With every assurance of consideration, I have the honour to be, sir, your most obedient servant,

"JAMES C. PREVOST,
"Her Majesty's Commissioner, &c., &c.

"Archibald Campbell, Esq.,
"Commissioner on the part of the United States, &c., &c."

The United States Commissioner again wrote on the 9th of July, stating that the letter of the 27th of May contained only a very circumlocutory and evasive answer, and the correspondence closed with a formal acknowledgment from Captain Prevost.(1)

After receiving the copies of the commission and instructions forwarded by Lord Malmesbury to Mr. Dallas, the United States Commissioner wrote to Mr. Cass as follows:(2)—

"United States North-west Boundary Commission,
"Camp Simiahmoo, August 4, 1859.

"SIR,—I have the honour to acknowledge the receipt (on the 25th ultimo) of your letter of the 8th of June. All of the accompanying documents were interesting to me, but the *extract* from Captain Prevost's secret instructions for his guidance was essential to a proper knowledge of the relations which now subsist between us as joint commissioners. I find from these instructions that I was fully justified in the apprehensions I communicated to him (subsequent to our discussion on the boundary question in November, 1857), that he was virtually, if not positively, prohibited from adopting the Canal de Haro as the boundary channel intended by the treaty. A perusal of these instructions throws a flood of light upon the tortuous and one-sided course which guided his action, with a view to bring about a disagreement and reference of the matter back to our respective Governments, unless he could accomplish the

(1) American State Papers, p. 111. (2) *Idem*, p. 106.

object his Government had in view. Having been furnished at an early day, through his Government, with a copy of my instructions, he had the advantage of knowing that I was in no way hampered in regard to the channel through which the boundary line was to be run, while he knew that he dare not go further than the channel east of the island of San Juan. I cannot well conceive of a more dishonest mode of attempting to evade the obligations of a treaty, or a greater outrage upon the confiding disposition of the Government of the United States, than is exhibited in these instructions for the guidance of the British commissioner. Nor can I understand how an officer of the British navy could conscientiously undertake to carry a treaty into effect under such instructions.

"I have never regarded the duty of commissioner to carry the treaty into effect as of a diplomatic character. I have, therefore, from the outstart, been open and unreserved in my communication with my colleagues both of the land and water boundary. But I have learned by experience that their views of duty are widely different from mine. I came out here to do a fair and honest business—to carry out faithfully, on the part of my Government, a contract entered into with Great Britain. Although the language of the treaty is as clear as day, and scarcely admits of more than one meaning, I did not plant myself upon its mere letter, but, finding that the lapse of time, the changes of administration in our Government, and selfish interests on the part of the British Government, instigated by the Hudson's Bay Company, had enveloped its meaning in an air of obscurity, I made diligent search for evidence which would throw light upon the intention of the negotiators, framers, and ratifiers of the treaty, fully determined, whatever might be the result of my investigations, to give due weight to it, without partiality, fear, or favour. The various documents I have laid before the department will attest the sincerity with which I have laboured to bring forward the truth. The British commissioner, Captain Prevost, on the contrary, has taken the very opposite course. The pursuit or fair consideration of evidence to elucidate any obscurity in which the language of

the treaty might be involved from any cause whatever has been most studiously avoided. A blind adherence to a tortured interpretation of the meaning of the words of the treaty has been with him apparently a sacred act of duty. This perverted reading of the treaty has been his infallible guide throughout my connection with him. And he has so resolutely shut his eyes to the light of the most authentic contemporaneous evidence I have laid before him, not only of the views of my Government, but also of his own, that I sincerely believe, though one should rise from the dead to confirm it, he would not give it credence.

"That so amiable and estimable a gentleman as Captain Prevost should pursue a course so inconsistent with the ordinary dictates of common sense and good judgment, to say nothing of the demands of high honour, has been to me a source of the most unfeigned regret and mystification. If the British Government, however, has the right to exact of its agents an implicit obedience to its mandates, regardless of all considerations but its interests, I must do Captain Prevost the justice of bearing witness to his devoted loyalty.

"I would respectfully call the attention of the department to the fact that there are still some points which must be embraced in the instructions for Captain Prevost's guidance which are not to be found in the *extract* forwarded to me. It is evident from the correspondence of Captain Prevost, that his claim to Rosario Straits on the ground of the *very peculiar wording* of the treaty, and his main objection to the Canal de Haro by his interpretation of the word *southerly* in the treaty, are derived from instructions; for he says in his letter of November 24, 1857, 'The high and official authority to whom I alluded in my letter of the 9th instant as the source of my information that the Vancouver, or Rosario Strait, was the channel contemplated by the British Government, is Her Majesty's present Secretary of State for Foreign Affairs, the Earl of Clarendon, and I cannot presume that he would intimate to me in writing, as he has done, that such was the case, unless he had substantial grounds for doing so.' Lord Napier, while

repudiating 'the very peculiar wording' of the treaty, and Captain Prevost's interpretation of the word 'southerly,' informed me that the Earl of Clarendon seemed to attach some importance to them. I cannot but think, therefore, that these instructions or suggestions have been purposely omitted from the *extract*, and, as they really formed the great obstacles to an agreement between Captain Prevost and myself, I think it important they should be obtained.

"A difficulty has also occurred in regard to an agreement upon the common initial point of the water and land boundary on the west side of Point Roberts, which, probably, is also the result of instructions. And I have also good reason to believe that Captain Prevost was authorised in some shape or form to negotiate with me for the disposal of the southern end of Point Roberts by exchange, make-weight, or otherwise. The manner in which the demarcation of the line across Point Roberts is held in abeyance by the refusal of the British commissioner to mark it as the initial point, satisfies me that considerable importance is attached by the British Government to the possession of it, and that they hope by some fortuitous circumstance to secure it.

"As the department has furnished the British Government with a *full* copy of my instructions, there is no reason why they should not in return furnish *full* copies of their commissioner's instructions. I would therefore respectfully recommend that a *full* copy of the instructions of Captain Prevost be requested for the information of the Government, and that when received, a copy of so much of them as I have not already received in the *extract* be transmitted to me.

"I transmit herewith, for the information of the department, a recent correspondence with Captain Prevost, from which it will be seen that there is little prospect of any progress in the determination of the line until the British Government are called upon to give their commissioner peremptory instructions to adopt the Canal de Haro. At present he seems to be divested of all power to act by his reference of the question to his Government, a condition of affairs anything but satisfactory.

"Circumstances to which I will allude in a subsequent communication(1) show the necessity of a speedy settlement of the boundary question. And I would strongly urge upon the department decisive measures to bring it about.

"As far as I am concerned, I am, as I have ever been, ready to settle it upon principles of common sense and international law. It is for the department to take such steps as will provide me with a colleague whose powers shall be equal to my own, and whose sense of right and duty will not be so crippled by special instructions for his guidance as to render the honest and faithful execution of the treaty an impossibility.

"I have the honour to be, very respectfully,

"Your obedient servant,

"ARCHIBALD CAMPBELL,

"Commissioner North-west Boundary Survey.

"Hon. Lewis Cass, Secretary of State."

It is desirable, both in the interests of Great Britain and the United States, that Point Roberts should be placed in the possession of Great Britain, although by the treaty it is given to the United States. If its possession be insisted on by the latter country, a valueless strip of land jutting out into the sea will be placed beyond the jurisdiction of the adjoining territory of British Columbia. Being also, by its position and little value, placed virtually out of the jurisdiction of the nearest United States authorities, this strip of land will prove a refuge for the wrongdoers of both countries, and will be the source of numerous disputes.

(1) American State Papers, p. 112.

CHAPTER X.

If further argument be necessary in aid of that of Capt. Prevost, I would base the claim of Great Britain to the Haro Archipelago firstly and mainly upon the clear and express language of the treaty of 1846, and shall contend that no gloss or explanation of the same can be given outside the words themselves of that treaty, as, for example, by evidence of the probable views and intentions of its negotiators.

Secondly (if such gloss or explanation be admitted), I shall argue that from the nature of the subject, from its inherent probabilities, from the evidence which is extant as to the views and intentions of the negotiators, from that which is required by international equity and by strict justice, as tending to place the contracting parties on an equality, the claim of Great Britain to the archipelago is incontestable.

In proceeding to construe this treaty, I do not think it absolutely necessary, but it may be convenient (having regard to the statements above quoted of Mr. Campbell), to state that the negotiator on the part of Great Britain was evidently actuated by perfect good faith; and was influenced by no desire or thought of overreaching the United States, or of leaving any loophole (as is sometimes done by parties contracting) for escape from the provisions of the contract into which he was about to enter. It will be conceded

that (as Chief Justice Eyre remarked in his judgment, delivered with reference to another treaty between Great Britain and the United States), "The negotiations (of Great Britain) have been at all times distinguished for their good faith, to a degree of candour which has been supposed sometimes to have exposed it to the hazard of being made the dupe of more refined politicians."(1)

Good faith on our part being conceded (and I do not intend to argue for one moment that the Government of the United States was not actuated by the most sincere good faith), I shall adopt a canon or rule of construction laid down by the learned judge above referred to : (2)—

"We have but one rule by which we are to govern ourselves. We are to construe this treaty as we would construe any other instrument, public or private. We are to collect, from *the nature of the subject*, *from the words and from the context*, *the true intent and meaning of the contracting parties*. This rule is identical in principle with Vattel's first general maxim of interpretation : 'It is not allowable to interpret what has no need of interpretation.'" (3)

This rule of construction has also the support of the authority of the late Lord Brougham, who, in a judgment upon the construction of an Act of Parliament, said : (4)—

"The construction of the Act must be taken from the bare

(1) In the case of Marryat *v.* Wilson. Bosanquet and Pullen's "Reports," p. 436.

(2) *Idem*, p. 439.

(3) Vattel, lib. ii., c. xvi., § 263.

(4) In the case of Crawford *v.* Spooner. Moore's "Indian Appeal Cases," Vol. 4, p. 187.

words of the Act. We cannot fish out what possibly may have been the intention of the Legislature; we cannot aid the Legislature's defective phrasing of the statute; we cannot add and mend, and by construction, make up deficiencies which are left there. If the Legislature did intend that which it has not expressed clearly, much more, if the Legislature intended something very different, if the Legislature intended something pretty nearly the opposite of what it said, it is not for judges to invent something which they do not meet with in the words of the text, aiding their construction of the text always, of course, by the context; it is not for them so to supply a meaning, for, in reality, it would be supplying it. The true way in these cases is to take the words as the Legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of those words is, either by the preamble or by the context of the words in question controlled or altered, and, therefore, if any other meaning was intended than that which the words purport plainly to import, then let another Act supply that meaning, and supply the defect in the previous Act."

I shall, then, in accordance with the above authorities, construe the language of the treaty without any reference either to the probable intentions of its framers (other than can be gained from the context) or to any extrinsic evidence, and shall consider the subject as though everything which they ought to have provided for has been provided for, and as though the hydrography, topography, and geological formation of the district were as well known to them as it is to us at this day.

The words requiring explanation run as follows:—

"The line of boundary between the territories of Her Britannic Majesty and those of the United States shall be continued westward along the said forty-ninth parallel of north

latitude to the middle of the channel which separates the continent from Vancouver's Island; and thence southerly through the middle of the said channel and of Fuca Straits to the Pacific Ocean: Provided however, that the navigation of the whole of the said channel and straits south of the forty-ninth parallel of north latitude remain free and open to both parties."

There is not one word in the treaty as to the contention on the part of the United States Government, that the line was deflected from the forty-ninth parallel, solely in order to give us possession of Vancouver's Island. Looking at the language of the treaty, the inference would be that the line was deflected in order to give to Great Britain a free navigation of the entire channel or Straits of Georgia.

The phrases upon which a construction must be placed are "channel," "separates the continent from Vancouver's Island," "and thence southerly through the middle of the said channel and of Fuca Straits." The word channel is used twice, but in each case it refers to the same channel. I think there can be no doubt as to the meaning of the word: on the one hand, a shallow strip of water would not satisfy its meaning, since it must be a navigable channel; on the other hand, a uniform depth of sixty feet would not be required in order to constitute such a formation. The Rosario Channel (1) is of sufficient width, and is navigable for vessels of the largest class. Great depth is unfavourable to navigation, inasmuch as no anchorage can be found.

With reference to the second phrase, the argu-

(1) American State Papers, p. 13.

ment of Captain Prevost, the British commissioner, is to my mind conclusive. Vattel says,[1] that treaty makers should not designedly depart from the common usage and appropriate meaning of words, and that it is presumed that they have conformed to established custom in this particular, as long as no cogent reasons can be adduced to authorise a presumption to the contrary; for that the presumption is, in general, that things have been done as they ought. In the present case the form of language commonly used is exactly reversed; instead of saying "which spearates Vancouver's Island" (the lesser) "from the continent" (the greater), the treaty says, "which separates the continent (the greater) from Vancouver's Island (the lesser). Had the contracting parties used the ordinary form of expression, there might have been some room for argument on the part of the United States, but the parties (judged by their own language) were careful to exclude all possibility of doubt or argument by departing from the usual mode of expression, and using a form by which their meaning is most clearly and unmistakably evidenced.

The contracting parties evidently placed themselves in the position of a man walking westwards along the continent, laying down the boundary line, and then, taking the nearest channel, that is, the one "which separates the continent," drawing the boundary line down the middle thereof. So, if they had commenced the demarcation of the boundary line from Vancouver's Island, they would have made use of a form

[1] Vattel, lib. ii., c. xvii., § 271.

of expression exactly the reverse of what they did use.

But the channel intended by the treaty must fulfil other conditions besides being navigable and being the one "separating the continent from Vancouver's Island;" a line commencing from the north of it, drawn through the middle of it, must run in a southerly direction. The words of the treaty which refer to this point should be construed as follows: "and thence southerly through the middle of the said channel and [through the middle] of Fuca Straits to the Pacific Ocean." Any other interpretation would lead to an absurdity, and, therefore, according to Vattel, ought to be rejected (1). Now it is strange that the negotiators of the treaty did not use the words "due south," instead of "southerly," and the use of the latter form of expression powerfully supports the contention of Great Britain. Three main channels are recognised by geographers as running between the continent and Vancouver's Island: the Haro Strait, in fact composed of two channels, the one proceeding in a westerly, the other in a southerly direction; the channel of the compromise proposed by Lord Russell, also made up of two or more channels; and the Rosario Strait.

In order to fulfil the requirements of the treaty, the "channel" must be a *continuous* channel separating the continent from Vancouver's Island, running from the north in a southerly direction, and joining the Straits of Fuca.

I venture to submit that the Rosario Strait is the

(1) Vattel, lib. ii., c. xvii., § 282.

only channel which fulfils all these requirements, and that it fulfils them strictly and to the letter.

Firstly.—The stretch of water, flowing from the middle of the Straits of Georgia, on the forty-ninth parallel of north latitude, through the Rosario Straits, and to the Straits of Fuca, may be correctly described as one continuous channel. The Haro Strait, as has been stated above, is made up of two distinct channels, one called the Saturna Channel, the other Haro Strait proper. The same remark applies to the channel of the compromise, which, as a glance at the map will show, is also made up of one or more distinct channels or straits.

Secondly.—The Rosario Strait separates the continent of America from Vancouver's Island, which the other channels cannot, according to the ordinary and received use of language, be said to do.

Thirdly.—The last-mentioned strait is a channel through the middle of which a line could be drawn which would run from the forty-ninth parallel, "southerly" and "through the middle of Fuca Straits to the Pacific Ocean." A line drawn through the Haro Strait channel would run first southerly, then due west, and then southerly to the Straits of Fuca.

It is contended, however, on the part of the United States, that *the literal reading* or *precise wording* of the treaty can lead to no safe or certain conclusion as to its meaning; and it is sought to open a vague and unsatisfactory inquiry into the intentions of the contracting parties and the motives by which they were actuated.(1)

(1) American State Papers, p. 13.

It is obvious that such an inquiry, if it be admitted, must be conducted according to certain principles; and inasmuch as the commission on the part of the United States has appealed to Vattel, and inasmuch as their great international jurist, Mr. Wheaton,(1) has not discussed the principles by which such an inquiry should be governed, but has referred his readers to that author, I shall proceed to extract from the work of Vattel the rules by which such an inquiry ought to be guided.

The first general canon of interpretation laid down by Vattel, is, as has been stated, that "it is not allowable to interpret what has no need of interpretation."(2)

This fundamental maxim is followed by the statement, that "in the interpretation of a treaty, or of any other deed whatsoever, the question is, to discover what the contracting parties have agreed upon;" and assuming that the terms of the treaty require interpretation, he proceeds to lay down certain fixed rules on which such interpretation ought to be formed.(3)

These fixed rules are stated in minute detail, and are supported with all the prolixity and profuse illustration by which his work is everywhere characterised. I shall, therefore, refer only to those which appear to me to bear immediately upon the question in hand.

The first of them runs as follows:(4)—

"The reason of the law or of the treaty, that is to say the motive which led to the making of it, and the object in con-

(1) Wheaton. Ed. 6, p. 355.
(2) Vattel, lib. ii., c. xvii., § 263.
(3) Vattel, lib. ii., c. xvii., §§ 268, 270.
(4) *Idem*, §§ 287, 288.

templation at the time, is the most certain clue to lead us to the discovery of its true meaning; and great attention should be paid to this circumstance, whenever there is question either of explaining an obscure, ambiguous, indeterminate passage in a law or treaty, or of applying it to a particular case. *When once we can certainly know the reason which alone has determined the will of the person speaking, we ought to interpret and apply his words in a manner suitable to that reason alone.* Otherwise he will be made to speak and act contrary to his intentions, and in opposition to his own views. Pursuant to this rule, a prince, who, on granting his daughter in marriage, has promised to assist his intended son-in-law in all his wars, is not bound to give him any assistance if the marriage does not take place.

"But we ought to be very certain that we know the true and only reason of the law, the promise, or the treaty. In matters of this nature, it is not allowable to indulge in vague and uncertain conjectures, and to suppose reasons and views where there are none certainly known. If the piece in question is in itself obscure—if, in order to discover its meaning, we have no other resource than the investigation of the author's views, or the motives of the deed—we may then have recourse to conjecture, and, in default of absolute certainty, adopt, as a true meaning, that which has the greatest degree of probability on its side. But it is a dangerous abuse to go, without necessity, in search of motives and uncertain views in order to wrest, restrict, or extend the meaning of a deed which is of itself sufficiently clear, and carries no absurdity on the face of it. Such a procedure is a violation of that incontestable maxim, that it is not allowable to interpret what has no need of interpretation. Much less are we allowed, when the author of a piece has in the piece itself declared his reasons and motives, to attribute to him some secret reason which may authorise us in giving an interpretation repugnant to the natural meaning of the expressions. Even though he should have entertained the views which we attribute to him, yet, if he has concealed them and announced different ones, it is upon the latter alone

that we must build our interpretation, and not upon those which the author has not expressed. We assume, as true, against him, what he has sufficiently declared.

"We ought to be the more circumspect in this kind of interpretation, as it frequently happens that several motives concur to determine the will of the party who speaks in a law or a promise. Perhaps the combined influence of all those motives was necessary in order to determine his will; perhaps each one of them, taken individually, would have been sufficient to produce that effect."

The second rule to which I shall ask attention is as follows:(1)—

"In unforeseen cases, that is to say, when the state of things happens to be such as the author of a deed has not foreseen, and could not be thought of, we should rather be guided by his intention than by his words, and interpret the instrument as he himself would interpret it if he were on the spot, or conformably to what he would have done if he had foreseen the circumstances which are at present known."

After referring (2) to the distinction between things *favourable* and things *odious*, and defining the former as those of which equity admits the extension rather than the restriction—the latter as those of which the restriction tends more certainly to equity than the extension, Vattel proceeds to point out what things are *favourable* and what are *odious*. He says:(3)—

"In the first place, *everything that tends to the common advantage in conventions, or that has a tendency to place the contracting parties on a footing of equality, is favourable.* The voice of equity, and the general rule of contracts, require that the conditions between the parties should be equal. We are not to presume, without very strong reasons, that one of the contracting parties intended to favour the other to his own

(1) Vattel, lib. ii., c. xvii., § 297. (2) *Idem*, § 300.
(3) *Idem*, § 301.

prejudice, but there is no danger in extending what is for the common advantage. If, therefore, it happens that the contracting parties have not made known their will with sufficient clearness, and with all the necessary precision, it is certainly more conformable to equity to seek for that will in the sense most favourable to equity and the common advantage, than to suppose it in the contrary sense. For the same reason, everything that is not for the common advantage, everything that tends to destroy the equality of a contract, everything that onerates only one of the parties, or that onerates the one more than the other, is odious."

Again he says :([1])—

"Whatever tends to change the present state of things is also to be ranked in the class of odious changes; for the proprietor cannot be deprived of his right, except so far, precisely as he relinquishes it on his part; and in case of doubt, the presumption is in favour of the possessor. It is less repugnant to equity to withhold from the owner a possession which he has lost through his own neglect, than to strip the just possessor of what lawfully belongs to him. In the interpretation, therefore, we ought rather to hazard the former inconvenience than the latter. Here also may be applied, in many cases, the rule we have mentioned, that the party who endeavours to avoid a loss has a better cause to support than he who aims at obtaining an advantage."

Guided by the rules above stated, I shall now discuss the entire boundary question as opened by the United States through their commissioner. And first as to the intention of the contracting parties. Here the preliminary question is, who are to be considered as the contracting parties whose intentions are to be sought for?

The British Constitution provides that it is the

([1]) Vattel, lib. ii., c. xvii., § 305.

prerogative of the Sovereign to make treaties, and the only check upon this power is that the ministry advising or concluding a treaty disadvantageous to the country or derogatory from its honour, is liable to loss of office, or, in extreme cases, to impeachment.

The Constitution of the United States empowers the President (1), "by and with the advice and consent of the Senate," to make treaties, provided two-thirds of the senators present concur.

It is contended by Mr. Campbell that the intention to be sought for is that of the President and Senate of the United States; that is, the intention of the power which ratifies the treaty. I must contend, however, that the intentions and views of the negotiators of the treaty are those to be sought for, and the meaning which they attached to the language used by them, is the meaning to be sought. If otherwise, no treaty could by any possibility be rendered binding and valid, since one of the ratifying parties might subsequently evade it, or render it null and void, by attaching a meaning to its language which was not present to the minds of the negotiators. When parties contract, it is necessary that their minds should be at one, so to speak, and the minds of two contracting Governments are brought together through the medium of the agents whom they respectively authorise to conduct their negotiations. But, further, how obtain evidence as to the intentions of so numerous a body as the Senate of the United States? Some among them may have been actuated

(1) Constitution of the United States, Art. 2, § 2.

and influenced by one set of facts, others by another set, all arriving, nevertheless, at the same conclusion.

The contention, that the arguments advanced by one of the promoters of the treaty of 1846, in his speech to the Senate, may be used to supply evidence of the intention of the treaty makers, in the sense understood by Vattel, requires only to be stated, when its absurdity becomes manifest. If I am right, then, in the conclusion at which I have arrived (though the arguments by which I have supported it might, perhaps, be more powerfully stated), the persons whose intentions are to be sought for are Mr. (afterwards Sir Richard) Pakenham, on the part of Great Britain, and Mr. Buchanan on the part of the United States.

The next inquiry will be as to the nature of the evidence by which the intentions, respectively, of those gentlemen are to be discovered. Such evidence will consist in the instructions issued to them by their respective Governments, in their despatches, in their own declarations, in the documents from which they acquired their knowledge of the subject-matter concerning which they were about to treat, and in the nature of the subject itself.

This evidence must, however, be in great measure governed by the actual language of the treaty which they negotiated. Evidence may explain what is doubtful, not contradict what is certain.

Of such evidence, unfortunately, there is little extant, and to much of that little I have not been able, from reasons explained above, to obtain access.

According to Sir Richard Pakenham, the final

instructions issued to him by the Earl of Aberdeen, dated the 18th May, 1846, stated that his desire was that the boundary line might be drawn (1) "in a southerly direction through the centre of King George's Sound and the Straits of Fuca to the Pacific Ocean." Not a word with reference to Vancouver's Island, or the reason for the deflection from the forty-ninth parallel alleged by Mr. Campbell; not a word with reference to the Canal de Haro or Straits of Haro.

It is probable that the map used by Mr. Pakenham (2) was Vancouver's chart, and I submit that a superficial glance at such map, or a careful inspection of the same, would lead an unprejudiced observer to the conclusion that the "channel" intended by Mr. Pakenham as the "channel" of the treaty was that through which the course sailed by Vancouver was drawn, and styled Vancouver's or Rosario Straits. That channel is in fact depicted as the only continuous channel between the mainland and Vancouver's Island.

On the part of the United States, a letter of Mr. McLane, who was sent on a special mission to Great Britain to aid in the settlement of the Oregon boundary question, is put forward as conclusive evidence of the intentions and views of Mr. Buchanan. The production of this letter exhibits the candour of

(1) American State Papers, p. 224. Mr. Campbell gives another version of this despatch (p. 58), written from memory after an inspection of the document, and he adds to the foregoing, "thus giving to Great Britain the whole of Vancouver's Island and its harbours."

(2) American State Papers, pp. 59, 61, 63.

Mr. Campbell in a brilliant light, for he thereby adduced evidence most damnatory of the cause he advocated. On the 18th of May, 1846, Mr. McLane writes as follows to Mr. Buchanan :([1])—

"The proposition" (of Great Britain) "most probably will offer substantially as follows:—

"1st. To divide the territory by the extension of the line on the parallel of forty-nine to the sea—that is to say, the arm of the sea called Birch's Bay—thence by the Canal de Haro and Straits of Fuca to the Ocean, and confirming to the United States (what, indeed, they would possess without special confirmation) the right freely to use and navigate the strait throughout its extent."

Mr. Buchanan signed the treaty with this despatch before him and yet, as Sir Richard Pakenham expressly states ([2])—

"He made no mention whatever of the Canal de Haro, as that through which the line of boundary would run, as understood by the United States Government."

Mr. Campbell also relies upon certain correspondence which preceded the treaty, and upon Mr. Benton's speech to the Senate. If it be contended that the wishes and views of the United States Government, prior to the making of the treaty, were that the Canal de Haro should be the boundary, the fact that that channel was not expressly mentioned in the treaty then affords the most convincing proof that the views and intentions of the British Government were otherwise, and that the United States negotiator felt that the treaty could not be concluded if the Canal de Haro were insisted on as the boundary, and openly described

([1]) American State Papers, p. 14. ([2]) *Idem*, p. 224.

as such, and that he designedly and purposely refrained from demanding such a concession from the British negotiator.

I shall conclude these remarks with a discussion of the doctrine so confidently put forward by the United States Commissioner, that "islands are appurtenant to the mainland"—"the continent embracing, as natural appendages to its coasts, the islands between it and the Canal de Haro."(1) This, for the United States, is a convenient theory, and, it must be confessed, when stated with proper limitations, has its foundation in natural law and reason. I am the more willing and ready to concede this, inasmuch as the argument based upon it tells more powerfully in favour of the claim of Great Britain than of that of the United States to the Haro Archipelago. Vancouver's Island has an area of about 1,670 square miles, or about one-fourth the extent of England and Wales, and that island may be said to have an independent existence, and can scarcely be termed a natural appendage to the coast of Washington Territory. It is covered with valuable timber, and beneath its surface lie extensive deposits of coal and limestone. From the description of the Haro Archipelago which has been given above, it must be evident that the islands of which it is composed are identical in appearance and in their geological formation with Vancouver's Island, and differ in those particulars, in as marked a degree, from the mainland of Washington Territory.(2) Thus, *they*

(1) On this theory the United States found their alleged claims to the West India Islands, and to the distant Bermudas.

(2) American State Papers, pp. 133, 137, 139, 141.

"abound with timber, coal, and limestone," whilst "it was found necessary to obtain limestone for building on Puget Sound either from California or Vancouver's Island."(1)

It might then with greater propriety be argued that the cluster of islands composing the Haro Archipelago are natural appendages of Vancouver's Island, and that the possession of that island should carry with it the sovereignty of the group with which it is identical in its appearance and formation. This will appear more clearly if we consider the principles and origin of the doctrine referred to, which doctrine is thus stated by Mr. Wheaton.(2)

"The term 'coasts' includes the natural appendages of the territory which rise out of the water, although these islands are not of sufficient firmness to be inhabited or fortified; but it does not properly comprehend all the shoals which form sunken continuations of the land perpetually covered with water. The rule of law on this subject is, *terræ dominium finitur, ubi finitur armorum vis;* and, since the introduction of fire-arms, that distance has usually been recognised to be about three miles from the shore. In a case before Sir W. Scott (Lord Stowell) respecting the legality of a capture alleged to be made within the neutral territory of the United States, at the mouth of the river Mississippi, a question arose as to what was to be deemed the shore, since there are a number of little mud islands, composed of earth and trees drifted down by the river, which form a kind of portico to the mainland. It was contended that these were not to be considered as any part of the

(1) It has even been stated by those acquainted with the opposite coast of Japan that the geological formation of Vancouver's Island, Queen Charlotte's Island, and the other islands of the British Pacific coast, is more akin to that of the Japanese coast than to that of Washington Territory.

(2) Wheaton's Elements. Ed. 6, p. 234.

American territory, that they were a sort of 'no man's land,' not of consistency enough to support the purposes of life, uninhabited, and resorted to only for shooting and taking birds' nests. It was argued that the line of territory was to be taken only from the Balize, which is a fort raised on made land by the former Spanish possessors. But the learned judge was of a different opinion, and determined that the protection of the territory was to be reckoned from these islands, and that they are the natural appendages of the coast on which they border, and from which, indeed, they were formed. Their elements were derived immediately from the territory; and on the principle of alluvium and increment, on which so much is to be found in the books of law, *Quod vis fluminis de tuo prædio detraxerit, et vicino prædio attulerit, palam tuum remanet*, even if it had been carried over to an adjoining territory. Whether they were composed of earth or solid rock, would not vary the right of dominion, for the right of dominion does not depend upon the texture of the soil.

The only authority cited by Mr. Wheaton in support of this statement is that of Lord Stowell, whose remarks in the case of the "Anna" may be reproduced here with advantage, and it will be seen that they do not go to the extent of the doctrine contended for by Mr. Campbell. The facts of the case are stated by the learned judge, and it will not be necessary to allude to them further. Lord Stowell said, in the course of his judgment:(1)—

"When the ship was brought into this country a claim was given of a grave nature, alleging a violation of the territory of the United States of America. This great leading fact has very properly been made a matter of much discussion, and charts have been laid before the Court to show the place of

(1) Robinson's "Admiralty Reports." Vol. 5, p. 385.

capture, though with different representations from the adverse parties. The capture was made, it seems, at the mouth of the River Mississippi, and, as it is contended in the claim, within the boundaries of the United States. We all know that the rule of law on this subject is *terræ dominium finitur, ubi finitur armorum vis*, and since the introduction of fire-arms, that distance has usually been recognised to be about three miles from shore; but it so happens in this case that a question arises as to what is to be deemed the shore, since there are a number of little mud islands composed of earth and weed drifted down by the river, which form a kind of portico to the mainland. It is contended that these are not to be considered as any part of the territory of *America;* that they are a sort of '*no man's land*,' not of consistency enough to support the purposes of life, uninhabited, and resorted to only for shooting and taking birds' nests. It is argued that the line of territory is to be taken only from the Balize, which is a fort raised on made land by the former Spanish possessors. I am of a different opinion. I think that the protection of territory is to be reckoned from these islands, and that they are the natural appendages of the coast on which they border, and from which, indeed, they are formed. Their elements are derived immediately from the territory, and on the principle of alluvium and increment, on which so much is to be found in the books of law, *quod vis fluminis de tuo prædio detraxerit, et vicino prædio attulerit, palam tuum remanet*, even if it had been carried over to an adjoining territory. Consider what the consequence would be if lands of this description were not considered as appendant to the mainland, and as comprised within the bounds of territory. If they do not belong to the United States of America any other power might occupy them; they might be embanked and fortified. What a thorn would this be in the side of *America!* It is physically possible at least that they might be so occupied by European nations, and then the command of the river would be no longer in America, but in such settlements. The possibility of such a consequence is enough to expose the fallacy of any arguments that are adduced to show that these islands are not to be

considered as part of the territory of *America*. Whether they are composed of earth or solid rock will not vary the right of dominion, for the right of dominion does not depend upon the texture of the soil.

"I am of opinion that the right of territory is to be reckoned from those islands."

The doctrine here stated is based first upon the principle of natural law, that a portion of land cut off from a man's estate by the force of a river, must be considered as still appertaining to such estate; the principle is not fully stated, or rather requires explanation. The words "vis fluminis" should be translated "sudden force of a river," for if land be gradually carried away from one estate and attached to another, it will appertain to the latter.

The doctrine is further based upon utility, as upon a consideration of the danger which might arise to a community from a contrary doctrine. An insignificant island might be fortified, and so might threaten and hold in awe the inhabitants of large tracts of country. Apply, now, these principles to the present case.

I have already shown that Vancouver's Island is of such an extent that it may be considered to have an independent existence, that its geological formation is such as to render it more than probable that it was at no time annexed to the mainland of Washington Territory. I have also shown that the islands of the Haro Archipelago have the same geological formation as that island, and the conclusion is irresistible that the force of the current, sweeping down through

Queen Charlotte's Sound and the Straits of Georgia, has cut off the smaller islands from the quasi mainland of Vancouver's Island.

I venture to submit, then, that the cluster of islands called the Haro Archipelago are natural appendages of the last-mentioned island.

If we turn to the second principle, viz., the principle of utility or fitness, all the evidence is in favour of the claim of Great Britain. If the Haro Archipelago is to pass into the possession of the United States, not only would the possession of Vancouver's Island be rendered useless to her, but she would be virtually cut off from her other territories on the Pacific coast of America. San Juan Island fortified by the United States would indeed be "a thorn in the side" of Vancouver's Island and of British Columbia; fortified by Great Britain she would threaten no commerce of the United States, and would blockade no passage from one part of her territory to another.

CHAPTER XI.

In this chapter we shall enter upon other and more warlike scenes, in which the chief actors are Brigadier-General W. S. Harney, United States Army, in command of the United States Military Department of Oregon; Lieutenant-Colonel Silas Casey, of the Ninth United States Infantry; and Captain George E. Pickett of that regiment. The Brigadier had been employed in what is termed in the Western States "suppressing" Indians, and had won great renown and popularity among the wild settlers and squatters of the West, towards whom he had long acted the part of a patron and protector.

The wild guerilla warfare in which he had been engaged, consisting chiefly in destroying companies of Indians whenever met with, had evidently caused him to forget the lessons in international law which he learnt at West Point, and he appears to have considered that a British colony might be "improved off the face of the earth" as easily, and with as little ceremony, as a tribe of Indians might be "suppressed."

That this blunt and fearless soldier, with his two comrades, did not plunge two great nations into a terrible war is due to the forbearance and tact displayed by Mr. (now Sir James) Douglas, Governor of Vancouver's Island, by the captains of Her Majesty's

ships on the Pacific station, and by Lieutenant-General Winfield Scott, commander-in-chief of the United States army.

The mode in which the far West is prepared for civilisation is familiar to all readers of Cooper's novels, which, although overdrawn, afford some idea of it. How the hardy squatter penetrates, rifle and axe on shoulder, into the recesses of the forests; how he builds his bark huts, and makes the little clearing in which he plants a few potatoes and sows a little Indian maize; how, when civilisation presses upon them, he sells his hut and clearing, and disappears again into the forest. These worthies lead a happy and reckless life; they often adopt companions from among the Indian women, and their children, half-breeds, take to the life their fathers led before them.

Men of this stamp would appear to be eminently unfitted for life in a respectable and civilised colony, and might be most unpleasant neighbours. The Hudson's Bay Company had established a settlement on the Island of San Juan, [1] having a stock of 5,000 sheep, and a number of horses, cattle, and pigs, and had by occupation gained a right to the soil thereof. The island itself has been always considered to be and treated as within the jurisdiction of the Governor of Vancouver's Island. Certain squatters had, however, at various times attempted to establish themselves in the island, and it was the current belief in the colony of Victoria, when I was out there, that these attempts had been made with an ulterior object, at the insti-

[1] American State Papers, p. 261.

gation of the authorities of Washington Territory. Complaints were made to the British Governor, and Lord Lyons, then British Minister at Washington, received instructions from home, and on the 12th of May, 1859, he wrote to Mr. Cass, United States Secretary of State, as follows: (1)—

"Sir,—Her Majesty's Government have received information that attempts have been recently made by citizens of the United States to establish themselves on the Island of San Juan, in the Gulf of Georgia. It appears that this is not the first time that similar practices have been resorted to by the citizens of the United States, and representations on the subject have more than once been addressed by this Mission to the Cabinet of Washington.

"I have to-day received instructions from Her Majesty's principal Secretary of State for Foreign Affairs to lose no time in calling the attention of the Government of the United States to this matter, and in requesting that any such unauthorised proceedings on the part of American citizens may be discountenanced by the neighbouring authorities of the United States.

"The question as to whether the island of San Juan shall ultimately appertain to Great Britain or the United States, depends upon the solution to be arrived at in regard to the boundary line between their respective territories under the Oregon treaty of 1846. Commissioners have been appointed by the two parties to ascertain how that line is to be run in conformity with the treaty. These commissioners have not been able to come to an agreement on the subject. It therefore remains for the two Governments to enter into direct communication with each other for the settlement of a question which very closely affects the good understanding between them.

"Her Majesty's Government have deferred taking any step consequent on the disagreement of the commissioners,

(1) American State Papers, p. 218.

until they should be in possession of the result of a survey, which they thought it necessary to institute, of the various channels into which the lower part of the Gulf of Georgia is divided by the numerous islands with which it is studded.

They have now received the report of the British surveyor, and I am directed to acquaint the Government of the United States that instructions will shortly be sent to me to communicate with them in the hope of arriving at a satisfactory settlement on the subject. And I am desired to add, that Her Majesty's Government are sure that the Cabinet at Washington would regret as much as themselves that any local collision should arise in the interval which would tend to embitter a discussion, which might otherwise be conducted with cordiality and goodwill. Her Majesty's Government trusts, therefore, that citizens of the United States will be restrained, as far as the institutions of this Government admit of their being so, from attempts to settle by unauthorised acts of violence a question which there will probably be little difficulty in arranging by amicable communication between the two Governments.

"I have the honour to be, with the highest consideration, sir, your most obedient, humble servant,

"LYONS.

"Hon. Lewis Cass, &c., &c."

One of the squatters (1) upon the island of San Juan was a man named Lyman A. Cutler, who claimed to be a citizen of the United States, and he had partially enclosed a small patch of land, which he had planted with potatoes. (2)

On or about the 15th of June, 1859, he shot, in the forest adjoining his house, a valuable hog belonging to the Hudson's Bay Company, which he alleged to have trespassed on the unenclosed ground he had taken possession of.

(1) American State Papers, p. 183. (2) *Idem*, p. 260.

In the course of the day, Mr. A. J. Dallas, a Director of the Company, with two friends, chanced to land at the island from the Company's trading steamer *Beaver*.

Having been informed of the wrongful act of Cutler, he, on the following day, went to him, accompanied by Mr. Griffin, the chief trader and agent of the Company on the island, and also by his two friends. On being remonstrated with, Cutler admitted his offence, but threatened to shoot any other of the Company's stock which should interfere with him.(1)

After some further conversation, Mr. Dallas rode off with his companions.

Subsequently he took occasion to inform the Governor of Vancouver's Island of the lawless and criminal act which had been committed by Cutler, and suggested that he should communicate with the Governor of Washington Territory on the subject, but it does not appear whether this suggestion was carried out.

It appears that General Harney had landed at Victoria in the month of July, 1859, and also that he had been on very cordial terms with the Governor of Vancouver's Island, of which Victoria is the capital. Suddenly the General left that city, and on the 9th of July landed on the island of San Juan, without any apparent object, inasmuch as no troops of his command were stationed there. On the 11th of July a petition was presented to him purporting to have been signed by twenty-two persons styling themselves

(1) American State Papers, p. 260.

"American citizens on the Island of San Juan." Among them was the squatter Cutler, and a Mr. Hubbs, representing himself as the United States Inspector of Customs on the island.[1]

The petition was as follows:[2]—

"To General Harney, Commander-in-Chief of the Pacific division of the United States Army.

"The undersigned, American citizens on the Island of San Juan, would respectfully represent: That in the month of April, in the year One thousand eight hundred and fifty-eight, the house of the United States Inspector of Customs for this island was attacked and fired into in the night by a party of Indians living on this island, and known as the Clallams, and had it not been for the timely aid of the Hudson's Bay Company, the Inspector would have fallen a victim to their savage designs. In the month of July following we found on the beach, close to the above-mentioned Indian camp, the bodies of two white men, apparently Americans, who had, when found, cotton cords about their necks, which had been used to conceal them under water. Last fall another daring murder was committed in the middle of the day, and in the plain sight of us all here, without the slightest chance of our rendering them assistance. Only ten days ago another body was found on our shore which had been the victim of foul play. Inclusive with the above dangers that we are exposed to from our neighbouring Indians, we are continually in fear of a descent upon us by the bands of marauding northern Indians, who infest these waters in large numbers, and are greatly retarding the progress of the settlement of this island.

"According to the treaty concluded June 15, 1846, between the United States and Great Britain (the provisions of which are plain, obvious, and pointed to us all here), this and all the islands east of the Canal de Haro belong to us. We,

(1) American State Papers, p. 147. (2) *Idem*, p. 149.

therefore, claim American protection in our present exposed and defenceless position.

"With a view of these facts, and for the essential advantage of having this and the surrounding islands immediately settled, we most earnestly pray that you will have stationed on this island a sufficient military force to protect us from the above mentioned dangers until we become sufficiently strong to protect ourselves.

"J. M. Haggaret.	"Noel Ent.
"Samuel McCauly.	"Michael Farris.
"J. E. Higgins.	"George Perkins.
"Chas. H. Hubbs.	"Alex. McDonald.
"L. A. Cutler.	"Peter Johnson.
"Wm. Butler.	"Angus McDonald.
"J. D. Warren.	"William Smith.
"H. Wharton, Jun.	"Charles McCay.
"John Witty.	"D. W. Oakes.
"B. S. Andrews.	"Paul K. Hubbs, Jun.
"John Hunter McKay.	"Paul K. Hubbs."

It may be noticed that no reference was made in the petition to the visit of Mr. Dallas; and the only reference to the Hudson's Bay Company therein contained bears ample testimony to the unselfish and ready kindness of the Company's agents.

It would appear, however, that a grossly untrue and garbled statement with respect to that gentleman's visit was made orally to the General.(1)

General Harney did not communicate with the British authorities, colonial or imperial, or with his commanding officer, General Scott, or with the Supreme Government at Washington, but proceeded at once to detach a company of troops, under Captain Pickett, to occupy the island.

(1) American State Papers, p. 148.

The directions given by him to Captain Pickett were as follows:(1)—

"Head-quarters, Department of Oregon, Fort
"Vancouver, W.T., July 18, 1859.

"CAPTAIN,—By special orders No. 72, a copy of which is enclosed, you are directed to establish your company on Bellevue, or San Juan Island, on some suitable position near the harbour, at the south-eastern extremity. The General commanding instructs me to say, the object to be attained in placing you thus is two-fold, viz:—

"1st. To protect the inhabitants of the island from the incursions of the northern Indians of British Columbia and the Russian possessions. You will not permit any force of these Indians to visit San Juan Island, or the waters of Puget Sound, in that vicinity, over which the United States have any jurisdiction. Should these Indians appear peaceable, you will warn them in a quiet but firm manner to return to their own country, and not visit in future the territory of the United States; and in the event of any opposition being offered to your demands, you will use the most decisive measures to enforce them; to which end the commander stationed on the steamer *Massachusetts* will be instructed to render every assistance and co-operation that will be necessary to enable your command to fulfil the tenor of these instructions.

"2nd. Another serious and important duty will devolve upon you in the occupation of San Juan Island, arising from the conflicting interests of the American citizens and the Hudson's Bay Company's establishment at that point. This duty is to afford adequate protection to the American citizens, in their rights as such, and to resist all attempts at interference by the British authorities residing on Vancouver's Island, by intimidation or force, in the controversies of the above-mentioned parties.

"This protection has been called for in consequence of the chief factor of the Hudson's Bay Company, Mr. Dallas, having

1) American State Papers, p. 146.

recently visited San Juan Island with a British sloop of war, and threatened to take an American by force to Victoria for trial by British laws. It is hoped a second attempt of this kind will not be made; but to insure the safety of our citizens, the General commanding directs you to meet the authorities from Victoria at once, on a second arrival, and inform them they cannot be permitted to interfere with our citizens in any way. Any grievances they may allege as requiring redress can only be examined under our own laws, to which they must submit their claims in proper form.

"The steamer *Massachusetts* will be directed to transport your command, stores, &c., to San Juan Island, where you are authorised to construct such temporary shelter as the necessities of the service demand.

"Any materials, as doors, window-sashes, flooring, &c., that can be rendered available, will be taken with you from Fort Bellingham. To secure to your command the vegetables of your garden, a small detachment will be left to gather them when grown.

"The General commanding is fully satisfied, from the varied experience and judgment displayed by you in your present command, that your selection to the duties with which you are now charged will advance the interest of the service, and that your disposition of the subjects coming within your supervision and action will enhance your reputation as a commander.

"In your selection of a position, take into consideration that future contingencies may require an establishment of from four to six companies, retaining the command of the San Juan harbour.

"I am, Captain, very respectfully, your obedient servant,

"A. Pleasonton,
"Captain 2nd Dragoons, Acting Assistant
"Adjutant-General.

"Captain George Pickett,
"Commanding Company of 9th Infantry, Fort
"Bellingham, Puget Sound."

On the same date, General Harney notified to Colonel Silas Casey the changes he had made in the disposition of the troops under his command, and directed that the northern Indians should be warned not to come into any of the waters under the jurisdiction of the United States, which (as he alleged) "*embraces all the islands and currents to the east of the Straits of Haro.*" General Harney did not communicate with General Scott until the 19th of July, when he wrote a letter to him containing the most extraordinary mis-statements, and containing charges against Mr. Dallas which he did not attempt to authenticate; nor did he give Mr. Dallas an opportunity of denying them. The following is an extract from this letter:(1)—

"Head-quarters, Department of Oregon,
Fort Vancouver, W.T., July 19th, 1859.

"SIR,—On the morning of the 9th instant I left *Victoria* and visited *Bellevue*, or San Juan Island, about ten miles to the east of Vancouver's Island, on the opposite side of the Straits of Haro. This island is fifteen miles long and five or six broad. It contains fine timber, good water and grass, and is the most commanding position we possess on the Sound; overlooking the Straits of Haro, the Straits of Fuca, and the Rosario Strait, it is the most suitable point from which to observe and prevent the northern Indians from visiting our settlements to the south of it. At the south-eastern extremity one of the finest harbours on this coast is to be found, completely sheltered, offering the best location for a naval station on the Pacific coast. The Hudson's Bay Company have an establishment on this island for the purpose of raising sheep, which they export at eight dollars a head. Twenty-five

(1) American State Papers, p. 147.

Americans, with their families, are also living upon the island, and I was petitioned by them, through the United States Inspector of Customs, Mr. Hubbs, to place a force upon the island to protect them from the Indians, as well as the oppressive interference of the authorities of the Hudson's Bay Company at Victoria with their rights as American citizens. Mr. Hubbs informed me that a short time before my arrival the chief factor of the company at Victoria, Mr. Dallas, son-in-law of Governor Douglas, came to the island in the British sloop of war, *Satellite*, and threatened to take one of the Americans by force to Victoria for shooting a pig of the Company's. The American seized his rifle, and told Mr. Dallas if any such attempt was made he would kill him on the spot. The affair ended. The American offered to pay to the Company twice the value of the pig, which was refused. To prevent a repetition of this outrage I have ordered the company at Fort Bellingham to be established on San Juan Island for the protection of our citizens, and the steamer *Massachusetts* is directed to rendezvous at that place with a second company to protect our interests in all parts of the sound.

"I am, sir, very respectfully, your obedient servant,

"WILLIAM S. HARNEY,
"Brigadier-General Commanding.

"Assistant Adjutant-General,
"Head-quarters of the Army, New York City."

Captain Pickett was directed to land on the island of San Juan by an order dated (as already noticed) on the 18th of July. Strange to say, no official account of his landing appears in the documents furnished to the Senate; and the first notice of his having landed is to be found in a letter addressed to him by Mr. Griffin, the Hudson Bay Company's agent, dated the 30th of July.

It was as follows:(1)—

(1) American State Papers, p. 153.

"Bellevue Farm, San Juan, July 30, 1859.

"SIR,—I have the honour to inform you that the island of San Juan, on which your camp is pitched, is the property and in the occupation of the Hudson's Bay Company, and to request that you and the whole of the party who have landed from the American vessels, will immediately cease to occupy the same. Should you be unwilling to comply with my request, I feel bound to apply to the civil authorities. Awaiting your reply, I have the honour to be, sir, your obedient servant,

"CHAS. JNO. GRIFFIN,
"Agent Hudson's Bay Company.

"Capt. Pickett, &c."

To this Captain Pickett replied in the following :(1)—

"Military Camp, San Juan, W.T., July 31, 1859.

"SIR,—Your communication of this instant has been received. I have to state in reply that I do not acknowledge the right of the Hudson's Bay Company to dictate my course of action. I am here by virtue of an order *from my Government, and shall remain until recalled by the same authority.*

"I am, sir, very respectfully, your obedient servant,

"GEORGE E. PICKETT,
"Capt. 9th U.S. Infantry, Commanding.

"Mr. Chas. J. Griffin,
"Agent Hudson's Bay Company, San Juan Island, W.T."

On the same date this officer enclosed the letter received by him from Mr. Griffin, and a copy of his reply, in the following letter, addressed to Colonel Casey :(2)—

"Military Camp,
"San Juan Island, W.T., July 30, 1859.

"MY DEAR COLONEL,—I have the honour to enclose you some notes which passed this morning between the Hudson's

(1) American State Papers, p. 153. (2) *Idem*, p. 152.

Bay authorities and myself. From the threatening attitude of affairs at present, I deem it my duty to request that the *Massachusetts* may be sent at once to this point. I do not know that any actual collision will take place, but it is not comfortable to be lying within range of a couple of war steamers. The *Tribune*, a 30-gun frigate, is lying broadside to our camp, and from present indications everything leads me to suppose that they will attempt to prevent my carrying out my instructions.

"If you have any boats to spare, I should be happy to get one, at least. The only whale boat we had was, most unfortunately, staved on the day of our departure.

"We will be very much in want of some tools and camp equipage. I have not the time, Colonel, to make out the proper requisition, but your Quartermaster can send us some of those articles as will be of great service.

"I am, sir, in haste, ever truly, your obedient servant,

"G. E. PICKETT,
"Captain 9th Infantry.

"Lieut.-Colonel Casey, 9th Infantry, Commanding,
"Fort Steilacoom, W.T."

"P.S.—The *Shubrick* (1) has rendered us every assistance in her power, and I am much indebted for the kindness of her officers."

On the 31st Colonel Casey forwarded the three last letters to head-quarters, Department of Oregon, in a note written by himself, in which he said, "the authorities on the other side are trying to bluff a little, but I do not apprehend anything serious." On the same day he sent another company of troops to reinforce Captain Pickett on San Juan Island.(2)

(1) The *Shubrick* was a vessel used by Mr. Campbell for the purposes of the survey.

(2) American State Papers, p. 151.

This account of the first landing of the troops I have compiled from the American State Papers, from which it would appear that it was conceived and carried out by General Harney, without any previous plans, and without the connivance of the United States Government, or of their Commissioner, Mr. Campbell.

The impression produced in the minds of many of the inhabitants of Victoria was, however, that the occupation of the island was instigated by Mr. Campbell, who believed it would be expedient to take some such decisive steps to secure the ultimate possession thereof.

Certainly, the behaviour of General Harney, and subsequently the conduct of the Supreme Government, appear to point to the conclusion that the last-named officer had good reason for supposing that his action would not be disapproved of. If no previous arrangement had been made (it was said), how could General Harney, a Brigadier-General, take upon himself the responsibility of commanding by sea as well as by land, directing the *Massachusetts*, United States ship of war, to transport troops and howitzers from one point to another, and, subsequently, as will be seen, to convey and land mortars and her own heavy guns? How could these things have been done without the knowledge or consent of the higher naval and military authorities?

The Governor of Victoria received information of the hostile occupation of the island from Mr. Griffin; and the excitement in Victoria on receipt of the

intelligence was great. It is due entirely to the temper and judgment of Governor Douglas that a collision did not at once ensue. He immediately placed himself in communication with Captain Prevost, the British Commissioner, and, at his request, the latter went to San Juan in the hope of finding Mr. Campbell, the United States Commissioner. On landing, he had an interview with Captain Pickett, who declared that he was merely acting under orders, that he would *prevent* any *inferior* force landing, would *fight* any *equal* force, and would *protest* against any *superior* force being landed. He stated that he did not know whether the orders under which he acted came originally from Washington, but took it for granted they did, or General Harney would not have taken so decisive a step. Captain Prevost then left, and reported to the Governor, who, after due consideration, determined to protect the interests of this country by landing an equal force upon San Juan, in fact, to do what was afterwards done, establish a joint occupation. He accordingly directed Captain Hornby, commanding Her Majesty's ship *Tribune*, to communicate with the officer in command of the detachment of the United States troops which had landed on the island, to inquire of him the number of troops under his command, and to land an equal force of British troops. On the 3rd of August Captain Hornby, having arrived at the island, proposed by letter that a meeting should take place between Captain Pickett and himself on board Her Majesty's ship *Tribune*.

Captain Pickett replied that he would most cheerfully meet them in his camp.

Captain Hornby accordingly landed, with Captains Prevost and Richards, the British Commissioners, and an interview took place between them, the purport of which was subsequently described by Captain Hornby in the following letter, addressed by him to Captain Pickett :(1)—

"Her Majesty's Ship *Tribune*,
"San Juan Island, August 3, 1859.

"Sir,—In accordance with your request for a written communication, I have the honour to transmit the substance of the declarations and propositions made by me to you to-day.

"Having drawn your attention to the extract of a despatch from Mr. Marcy, Secretary of State, to his Excellency Governor Stevens, dated July 14th, 1855, prescribing the conduct that should be pursued by the officers of the United States in respect of the disputed grounds, I asked if that was the tenor of your present instructions, or if the relations of the two states had been placed on other than a friendly footing by any of a more recent date.

"To this you replied by referring to the date of the despatch.

"I then asked you, in the name of Governor Douglas, the terms on which you had occupied the Island of San Juan; to which you replied that you did so by order of the 'General commanding,' to protect it as part of the United States territory, and that you believed he acted under orders from the Government at Washington.

"I then presented to you the Governor's protest against any such occupation or claim. I represented to you that the fact of occupying a disputed island by a military force, necessitated a similar action on our part; that again involved the

(1) American State Papers, p. 155.

imminent risk of a collision between the forces, there being a magistrate of each nation now acting on the island, either of whom might call on those of their country for aid.

"To prevent the chance of such collision, I suggested that a joint military occupation might take place, and continue until replies could be received from our respective Governments; and, during such times, that the commanding officers of the forces should control and adjudicate between their respective countrymen, the magistrates being withdrawn on both sides, or the action of their courts suspended for the time being, their employment not being necessary under a joint military occupation.

"I suggested this course as apparently the only one left (short of entire evacuation by the troops under your command) likely to produce the object so much to be desired, viz., the prevention of a collision between the forces or authorities of the two countries, landed or in the harbour of San Juan, an event which must lead to still more disastrous results, by permanently estranging the friendly relations subsisting between Great Britain and the United States of America. You replied that you had not authority to conclude such terms, but suggested the reference of them to General Harney and Governor Douglas, without interference in any way with our liberty of action. I pointed out that my proposition was strictly in accordance with the principles laid down in *Mr. Marcy's despatch*, and that yours, on the other hand, offered no security against the occurrence of some immediate evil.

"That the officers of the United States Government had committed an act of aggression by landing an armed force on this island, pending the settlement of our respective claims to its sovereignty, without warning to us, and without giving you a discretionary power of making any necessary arrangements, that the United States and its officers alone must be responsible for any consequences that might result, either immediate or future.

"I agreed to your request to furnish you with the substance of the conversation in writing, and concluded by

informing you, that having now made what seemed to me a most equitable and simple proposition, I reserved to myself, in the event of your non-acceptance of it, entire liberty of action either for the protection of British subjects and property, or of our claims to the sovereignty of the island, until they are settled by the North-western Boundary Commission now existing, or by the respective Governments.

"I believe I have now given you the substance of our conversation, and have only to add my regret that you were not able to agree to a course which it appears to me would totally avoid the risk of a collision.

"The responsibility of any such catastrophe does not, I feel, rest on me or on Her Majesty's representative at Vancouver's Island.

"I have the honour to be, sir,

"Your most obedient humble servant,

"GEOFFREY PHIPPS HORNBY,

"Captain and Senior Officer."

"Captain Geo. Pickett,

"Commanding Detachment of United States 9th Regiment."

The protest of Governor Douglas referred to in the letter, was as follows:(1)—

"By James Douglas, C.B., Governor and Commander-in-Chief in and over the colony of Vancouver's Island and its dependencies, Vice-Admiral of the same, &c.

"The sovereignty of the Island of San Juan, and of the whole of the Haro Archipelago, has always been undeviatingly claimed to be in the crown of Great Britain. Therefore, I, James Douglas, do hereby formally and solemnly protest against the occupation of the said island, or any part of the said archipelago, by any person whatsoever, for or on behalf of any other power, hereby protesting and declaring that the sovereignty thereof by right now is, and always hath been, in Her Majesty Queen Victoria, and her predecessors, kings of Great Britain.

(1) American State Papers, p. 157.

"Given under my hand and seal at Victoria, Vancouver's Island, on this second day of August, One thousand eight hundred and fifty-nine, and in the twenty-third year of Her Majesty's reign.

"JAMES DOUGLAS."

To the conciliatory and reasonable offer of Captain Hornby, who had force at his disposal immeasurably superior to that of Captain Pickett, the following reply was made by the latter officer :(1)—

"Military Post, Island of San Juan, W.T.,
"August 3, 11 P.M.

"SIR,—I have the honour to acknowledge the receipt of your communication of this date, in reference to the conversation which was held to-day between ourselves and Captains Prevost and Richards. Your recollection of said conversation seems to be very accurate. There is one point, however, which I dwelt upon particularly, and which I must endeavour, as the officer representing my Government, to impress upon you, viz., that as a matter of course, I, being here under orders from my Government, cannot allow any joint occupation *until so ordered by my commanding officer*, and that any attempt to make any such occupation as you have proposed, before I can communicate with General Harney, will be bringing on a collision which *can* be avoided by awaiting this issue. I do not for one moment imagine that there will any difficulty occur on this island which will render a military interference necessary; and I therefore deem it proper to state that I think no discredit can reflect upon us or our respective flags by remaining in our present positions until we have an opportunity of hearing from those higher in authority.

"I hope most sincerely, sir, you will reflect on this, and hope you may coincide with me in my conclusion. Should you see fit to act otherwise, you will then be the person who will bring on a most disastrous difficulty, and not the United States officials.

(1) American State Papers, p. 156.

"I have thus hurriedly answered your communication, in order to avoid any delay and its consequences.

"I remain, with much respect, your obedient servant,

"GEORGE E. PICKETT,

"Captain 9th Infantry, Commanding Post.

"Captain G. Phipps Hornby, commanding H.B.M.
"Ship *Tribune*, Harbour of San Juan, Washington Territory."

On the same date Captain Pickett wrote as follows to head-quarters :(1)—

"San Juan, W.T., Military Post,
"August 3, 10 P.M.

"CAPTAIN,—I have the honour to report the following circumstances :—The British ships, the *Tribune*, the *Plumper*, and the *Satellite*, are lying here in a menacing attitude. I have been warned off by the Hudson's Bay Company's agent; then a summons was sent to me to appear before a Mr. De Courcey, an official of Her Britannic Majesty. To-day I received the enclosed communications, and I also enclose my answer to the same.

"I had to deal with three captains, and I thought it better to take the brunt of it. They have a force so much superior to mine that it will be merely a mouthful for them; still I have informed them that I am here by order of my commanding general, and will maintain my position if possible.

"They wish to have a co-joint occupation of the island; I decline anything of that kind. They can, if they choose, land at almost any point on the island, and I cannot prevent them. I have used the utmost courtesy and delicacy in my intercourse, and, if it is possible, please inform me at such an early hour as to prevent a collision. The utmost I could expect to-day was to suspend any proceeding till they have had time to digest a *pill* which I gave them. They wish to throw the onus on me, because I refused to allow them to land an equal force, and

(1) American State Papers, p. 153.

each of us to have military occupation, thereby wiping out both civil authorities. I say I cannot do so until I hear from the General.

"I have endeavoured to impress them with the idea that my authority comes directly through *you* from *Washington*.

"The *Pleiades* left this morning for San Francisco with Colonel Hawkins. The excitement in Victoria and here is tremendous. I suppose some five hundred people have visited us. I have had to use a great deal of my *peace-making* disposition in order to restrain some of the sovereigns. Please to excuse this hasty, and I am almost afraid unintelligible letter, but the steamer is waiting, and I have been writing under the most unfavourable circumstances. I must add that they seem to doubt the authority of the General commanding, and do not wish to acknowledge his right to occupy the island, which they say is in dispute, unless the United States Government have decided the question with Great Britain. *I have so far staved them off, by saying that the two Governments have, without doubt, settled this affair.* But this state of affairs cannot last; therefore, I must respectfully ask that an express be sent me immediately, on my future guidance. I do not think there are any moments to waste. In order to maintain our dignity we must occupy in force, or allow them to land an equal force, which they can do now, and possibly will do, in spite of *my* diplomacy.

"I have the honour to enclose all the correspondence which has taken place. Hoping that my course of action will meet with the approval of the General commanding, and that I may hear from him in regard to my future course at once,

"I remain, Captain, your obedient servant,

"G. E. PICKETT,

"Captain 9th Infantry, Commanding Post.

"Captain A. Pleasonton, Mounted Dragoons, Adjutant-General,
"Department of Oregon, Fort Vancouver, W.T."

Comment upon such a despatch from an officer

employed in transactions so important as these would be thrown away. I may, however, call attention to the fact that he stated, "I have endeavoured to impress them with the idea that my authority comes directly through you, from Washington," although he must have been aware that such was not the case.[1]

On the 6th of August the Assistant Adjutant-General of the Department of Oregon wrote, by order of General Harney, to Captain Pickett [2], approving the course the latter had pursued, and directing that no joint occupation, or any civil jurisdiction, by the British authorities, should be permitted on San Juan Island under any circumstances.

At the same time he enclosed the following communication from General Harney to Governor Douglas :[3]—

"Head-quarters, Department of
"Oregon, Fort Vancouver, W.T., August 6, 1859.

"SIR,—I have the honour to inform you of the receipt of an official copy of a protest made by you to the occupation of San Juan Island, in Puget Sound, by a company of United States troops under my command.

"This official copy was furnished by Captain Hornby, of Her Majesty's ship *Tribune*, to the United States officer in command at San Juan Island, Captain George Pickett, of the 9th Infantry of the American army, together with a communication threatening the joint occupation of San Juan Island by the forces of Her Majesty's ship *Tribune*, *Plumper*, and *Satellite*, now in the harbour of that island by your orders.

"As the military commander of the department of Oregon, assigned to that command by the orders of the President of

[1] American State Papers, p. 158. [2] *Idem*, p. 157.
[3] *Idem*, p. 157.

the United States, I have the honour to state for your information that by such authority invested in me I placed a military command upon the island of San Juan, to protect the American citizens residing on that island from the insult and indignities which the British authorities of Vancouver's Island, and the establishment of the Hudson's Bay Company, recently offered them, by sending a British ship of war from Vancouver's Island to convey the chief factor of the Hudson's Bay Company to San Juan, for the purpose of seizing an American citizen and forcibly transporting him to Vancouver's Island, to be tried by British laws.

"I have reported this attempted outrage to my Government, and they will doubtless seek the proper redress from the British Government. In the meantime I have the honour to inform your Excellency I shall not permit a repetition of that insult, and shall retain a command on San Juan Island, to protect its citizens, in the name of the United States, until I receive further orders from my Government.

"I have the honour to be, very respectfully, your obedient servant,

"W. S. HARNEY,
"Brigadier-General United States Army, Commanding.

"His Excellency James Douglas, C.B., Governor of
"Vancouver's Island, &c., Vice-Admiral of the same."

To this communication the Governor replied on the 13th of August, 1859, in the following terms :([1])—

"Government House, Victoria, Vancouver's Island,
"August 13, 1859.

"SIR,—On the evening of the 10th inst. I had the honour of receiving your despatch, dated Fort Vancouver, August 6, 1859.

"2. In reply thereto I must thank you for the frank and straightforward manner in which you communicate to me your reasons for occupying the island of San Juan, on the Haro

([1]) American State Papers, p. 171.

Archipelago, with a portion of the military forces of the United States under your command.

"3. I am glad to find that you have done so under your general instructions from the President of the United States as military commander of the Department of Oregon, and not by direct authority from the Cabinet at Washington.

"4. You state that the reasons which induced you to take that course, are the 'insults and indignities which the British authorities of Vancouver's Island, and the establishment of the Hudson's Bay Company, have recently offered to American citizens residing on the Island of San Juan, by sending a British ship of war from Vancouver's Island to convey the chief factor of the Hudson's Bay Company to San Juan for the purpose of seizing an American citizen, and transporting him to Vancouver's Island to be tried by British laws.'

"5. I will explain, for your information, that the agents of the Hudson's Bay Company hold no official position in Vancouver's Island, nor exercise any official power or authority, and are as entirely distinct from the officers of the Executive Government as are any other inhabitants of Vancouver's Island.

"6. To the reported outrage on an American citizen, I beg to give the most unhesitating and unqualified denial. None of Her Majesty's ships have ever been sent to convey the chief factor, or any officer of the Hudson's Bay Company, to San Juan, for the purpose of seizing an American citizen, nor has any attempt ever been made to seize an American citizen and to transport him forcibly to Vancouver's Island for trial, as represented by you.

"7. Up to a very recent period but one American citizen has been resident on San Juan; about the commencement of the present year a few American citizens began to 'squat' upon the island, and upon one occasion a complaint was made to me by a British subject of some wrong committed against his property by an American citizen; but no attention was paid to that complaint, out of consideration and respect to the

friendly Government to which the alleged offender belonged, and whose citizens, I think it cannot be denied, have always been treated with marked attention by all the British authorities in those parts. With reference to San Juan in particular, I have always acted with the utmost caution, to prevent, so far as might lie in my power, any ill-feeling arising from collisions between British subjects and American citizens, and have, in that respect, cordially endeavoured to carry out the views of the United States Government as expressed in a despatch from Mr. Marcy, dated 17th July, 1855, to Her Majesty's Minister at Washington, a copy of which I herewith enclose for your information, as I presume that the document cannot be in your possession.

"8. Following the dignified policy recommended by that despatch, I should, in any well-grounded case of complaint against an American citizen, have referred the matter to the federal authorities in Washington Territory, well assured that if wrong had been committed reparation would have followed.

"9. I deeply regret that you did not communicate with me for information upon the subject of the alleged grievance; you would then have learned how unfounded was the complaint, and the grave action you have adopted might have been avoided. I also deeply regret that you did not mention the matter verbally to me when I had the pleasure of seeing you at Victoria last month, for a few words from me would, I am sure, have removed from your mind any erroneous impressions, and you would have ascertained personally from me how anxious I have ever been to co-operate to the utmost of my power with the officers of the United States Government in any measures which might be mutually beneficial to the citizens of the two countries.

"10. Having given you a distinct and emphatic denial of the circumstances which you allege induced you to occupy the island of San Juan with United States troops, having shown you that the reasons you assign do not exist, and having endeavoured to assure you of my readiness on all occasions to act for the protection of American citizens and for the promo-

tion of their welfare, I must call upon you, sir, if not as a matter of right, at least as a matter of justice and of humanity, to withdraw the troops now quartered upon the island of San Juan, for those troops are not required for the protection of American citizens against British authorities; and the continuance of those troops upon an island, the sovereignty of which is in dispute, not only is a marked discourtesy to a friendly Government, but complicates to an undue degree the settlement in an amicable manner of the question of sovereignty, and is also calculated to provoke a collision between the military forces of two friendly nations in a distant part of the world.

"I have the honour to be, sir,

"Your most obedient servant,

"JAMES DOUGLAS.

"Brigadier-General W. S. Harney,
"Commanding the troops in the Department of Oregon."

General Harney replied as follows:[1]—

"Head-quarters, Department of Oregon,

"Fort Vancouver, W.T., August 24, 1859.

"SIR,—I have the honour to acknowledge the receipt of your communication of the 13th instant, which came to me by mail this morning. The copy of Mr. Marcy's despatch of the 17th July, 1855, to Her Majesty's Minister at Washington, stated to be in your communication enclosed, was not received. This, I presume, was an accidental omission in the transmission of your letter.

"It was with pleasure I received from your Excellency a prompt disavowal of any intention on the part of the British authorities of Vancouver's Island to commit any aggression upon the rights of American citizens residing on San Juan Island, and I desire to communicate to you that I shall forward this despatch by the first opportunity to the President of the United States, to enable him to consider it in connection with all the facts duly reported to him attending the occupation

[1] American State Papers, p. 173.

of San Juan Island by a portion of the troops under my command.

"Your Excellency has been pleased to express how anxious you have ever been to co-operate with the officers of the United States Government in any measures which might be materially beneficial to the citizens of the two countries, and your regret is signified that communication with you on the subject of the occupation of San Juan Island had not been sought during my late agreeable visit to your Excellency at Victoria.

"I beg to offer in reply that I have cordially reciprocated the sentiments of friendship and goodwill you have manifested towards American interests from the period of my service with this command. In that time I have, on two different occasions, notified the Government of the United States of your acts affecting our citizens in terms of commendation and praise, as assurances of a proper appreciation of the confidence reposed by my Government in that of Her Majesty. On my late visit to Victoria I was without knowledge that any occurrence had taken place on San Juan Island to outrage the feelings of its inhabitants, else I should then have informed your Excellency what I conceived it became incumbent for me to do under such circumstances.

"The explanation your Excellency has advanced, while it serves to remove the impression at first created of a direct action on the part of the British authorities of Vancouver's Island in the recent occurrences on San Juan Island against the rights of our citizens, does not expose any evidence of a preventive nature to a repetition of the acts which have caused so serious a misunderstanding in the minds of the American people on San Juan Island; nor has the course which events have taken since the occupation of the island by the troops of my command been of such character as to reassure those people, could the contents of your despatch be announced to them.

"From what has taken place I do not feel myself qualified to withdraw the present command from San Juan Island until

the pleasure of the President of the United States has been made known on the subject. I can, however, frankly assure your Excellency that the same motives which have induced me to listen to the appeals of my own countrymen will be exerted in causing the rights of Her Majesty's subjects to San Juan to be held inviolate.

"I have the honour to be, very respectfully, your obedient servant, "W. S. HARNEY,

"Brigadier-General, United States Army, Commanding.

"His Excellency James Douglas, C.B.,

"Governor of Vancouver's Island and its Dependencies,

"Vice-Admiral of the same, &c."

About this period Colonel Casey (1) was ordered by General Harney to reinforce the United States troops on the island, and on the 7th of August the General wrote to the senior officer of the United States navy, "commanding squadron on the Pacific coast" requesting him to order to Puget Sound such force as he could render available to assist in the protection of American interests in that quarter. On the 8th of August General Harney wrote the following despatch to the Adjutant-General :(2)—

"Head-quarters, Department of Oregon,
Fort Vancouver, W.T., August 8, 1859.

"COLONEL,—In connection with my report of yesterday's date, I desire to state that the island of San Juan has for months past been under the civil jurisdiction of Whatcom County, Washington Territory. A justice of the peace had been established on the island, *the people had been taxed by the Company, and the taxes were paid by the foreigners as well as Americans.* An Inspector of Customs, a United States officer of the Treasury department, had been placed upon the island, in the discharge of his proper duties. The British authorities

(1) American State Papers, p. 158. (2) *Idem*, p. 160.

at Vancouver's Island were aware of all these facts, and never attempted to exercise any authority on the island, except clandestinely, as reported yesterday in the case of the pig which was killed.

"When Governor Douglas heard of the arrival of Captain Pickett's command at San Juan, he appointed a justice of the peace and other civil authorities at Victoria, and sent them over in the British ship of war *Plumper*, to execute British laws on the island. Captain Pickett refused to permit them to act as such, and I have sustained him in his position. I believe I have now fully and fairly explained all the facts which have any bearing upon the occupation of San Juan Island, which was made an imperious necessity by the wanton and insulting conduct of the British authorities of Vancouver's Island towards our citizens.

"I am, Colonel, very respectfully, your obedient servant,

W. S. HARNEY,

"Brigadier-General Commanding.

"Colonel S. Cooper, Adjutant-General, United States Army, Washington City, D.C."

Colonel Casey landed on the island on the 10th of August,[1] and was directed to reinforce his command with four companies of artillery, if he conceived necessity required it.

The Colonel described his landing on the island, and subsequent proceedings, in the following highly characteristic letter:[2]—

"Camp Pickett, San Juan Island, W.T.,

"August 12, 1859.

"CAPTAIN,—I have the honour to report that, in obedience to orders received from department head-quarters, I left Fort Steilacoom on the steamer *Julia* on the 9th instant (the morning after the receipt of the order), with my command. In a short

[1] American State Papers, pp. 163, 164. [2] *Idem*, p. 164.

time after leaving we were met by the steamer *Active*, on her way to Fort Steilacoom, for the purpose of communicating to me the state of affairs on the island. I was strongly and solemnly advised by Captain Alden, in view of the momentous consequences that might arise, not to land any troops on the island, as this would be prevented by the British steam-ship of war, *Tribune*, who, with her fires constantly kept up, was lying with her broadside on the landing.

"Although fully appreciating the terrible consequences of a hostile collision with our quasi enemy, *which would probably be no less than involving two great nations in war*, I did not, under the circumstances, however, consider myself at liberty to disregard my orders, and accordingly resolved to land *under the guns of the frigate. The commencing hostilities should be on their side.* We left Port Townshend about twelve o'clock the night of the 9th, expecting to reach San Juan early on the morning of the 10th. The fog, however, came up so dense, that we did not make the island of San Juan until about seven o'clock the morning of the 10th.

"After hugging the shore for a few miles, I was informed by the captain that we were but a short distance from Captain Pickett's camp, and that it was difficult to get along, on account of the fog, and that, moreover, the tide was so low that he would not have been able to have gotten up to the wharf at the landing for several hours.

"Finding ourselves in a smooth place near the land, with the coast so depressed at the point as to make the ascent from the shore easy, I landed the troops and howitzers, with orders to the senior officer to move them to Captain Pickett's camp.

"I proceeded on the steamer around to the wharf, taking with me my adjutant and a small guard for the howitzer ammunition and other public property.

"I found the *Tribune* lying as has been described. They did not interfere with the landing of our freight; whether they would have interfered with the landing of the troops I cannot say. It is Captain Pickett's opinion that they would.

"Before I had landed from the steamer I received a mes-

sage from Captain Pickett, by one of his officers, requesting my presence at once in camp. The captain pointed out to me a British war steamer, ascertained afterwards to be the *Satellite*, which he was under the impression was about taking a position to shell the camp. The camp is situated on a narrow neck of land opposite to the harbour, and distant about two-thirds of a mile. The *Tribune*, lying in the harbour, had on board several hundred men, composed of Marines, Royal Artillery, and Sappers and Miners. He expected the land attack from the harbour side, and was prepared to fire upon them with his howitzers, and then spike them, deliver fire with his musketry, and retreat to the woods. Not having time to form any well considered plan of my own with regard to the state of affairs, I did not countermand the directions that Captain Pickett had given, seeing the danger of a collision at any moment, which would inevitably lead to war between two mighty nations connected by so many common bonds, and, whichever way it might terminate, would be eminently disastrous to the cause of civilisation and the interests of humanity. I resolved to make an attempt to prevent so great a calamity. I sent an officer aboard the *Tribune*, with a request that Captain Hornby, the commander, would call on me at my camp for the purpose of a conference.

"The message returned to me by Captain Hornby was that he was much engaged at that time, and would come if he could conveniently, but would be happy to see me on board his vessel. However, in a few hours the Captain came, accompanied by Captain Prevost, the British, and Mr. Campbell, the United States Commissioner.

"I informed Captain Hornby that I had landed that morning with a force of United States troops, and explained to him the reason why I had not landed at the wharf under the guns of the frigate.

"I also said to him that I regretted that Captain Pickett had been so much harassed and threatened in the position he had occupied. I inquired of Captain Hornby who the officer highest in command was, and where he was to be found. He

said it was Admiral Baynes, and that he was then on board the flag-ship *Ganges*, in Esquimault harbour. I intimated a wish to have a conference with the Admiral, and that I would go down to Esquimault harbour the next day, for the purpose of the interview. Both the Captain and the British Commissioner seemed pleased. The next day, accompanied by Captain Pickett (both of us in full uniform), and Mr. Campbell, I went down to Esquimault, on the steamer *Shubrick*. We anchored near the *Ganges*. I sent to the Admiral, by an officer, the note marked A. I received in reply the note marked B. The note marked C was taken on board by Captain Pickett, and handed to the Admiral in person. The Captain was courteously received by the Admiral. Governor Douglas was present in the cabin. After reading the note the Admiral handed it to the Governor. The Governor inquired if I knew he was on board the ship. The Captain replied that he had no reason to suppose I did, but that I had not sought an interview with him, but with the Admiral. The Captain informed the Admiral that the steamer was then firing up, but that I would be happy to wait, should he then desire to give me the conference. It was declined; but the Admiral reiterated his desire that he would be happy to see me on board the ship. I was of opinion that I had carried etiquette far enough in going twenty-five miles to see a gentleman who was disinclined to come one hundred yards to see me.

"The proposition which I intended to have made the Admiral was this: to calm the rising excitement on both sides among the people, and to give time for the intentions of the home Government to be made known in regard to the matter, I intended to propose that in case he (the Admiral) would pass his word on honour that no threats should be made, or molestation given, by the force under his command, for the purpose of preventing Captain Pickett from carrying out the orders and instructions with which he is intrusted, I would recommend to the commanding General the withdrawal of the reinforcement which had landed on the island under my command, and that affairs should so remain until the sovereign

authorities should announce their intentions. I have so far had no further intercourse with any of the officers of the fleet. Lieutenant Kellog, 3rd Artillery, being at Fort Steilacoom, on the reception of your order I directed him to accompany me in charge of the artillery. I trust that, under the circumstances, the General commanding will approve of my course in the matter.

"The *Massachusetts* arrived to-day, with Major Haller's command on board. Inasmuch as most of the subsistence stores here are spoiled, having been damaged on board the *Massachusetts*, before she landed them at Bellingham Bay, and the articles of the quartermaster's department being required, I shall direct the *Massachusetts* to proceed, as soon as the guns are landed, to Fort Townshend, and take from there all the public property, leaving a sergeant and two or three privates to take care of the buildings and garden. I enclose a list of the ships and men which the British have in this vicinity. I would advise that the general send an officer express to San Francisco, requesting the naval captain in command to send up any ships of war he may have on the coast. It is not pleasant to be at the mercy of any one who is liable at any moment to become your open enemy. The British have a sufficient naval force here to *effectually blockade this island* when they choose. I do not know what the intentions of the British naval authorities with respect to this island are. I shall resist any attack they may make upon my position. I request that five full companies of regular troops, with an officer of engineers and a detachment of sappers, be sent here as soon as *possible*. Let Lieutenant Kellog's be one of the companies. I have enclosed copies of communications from Major Haller, with regard to his operations with the Indians. I think the major exercised a commendable enterprise in his operations, and that there will be no further difficulty.

"Very respectfully, your obedient servant,

"SILAS CASEY,

"Lieutenant-Colonel 9th Infantry.

"Captain Alfred Pleasonton, Acting Assistant Adjutant-
"General, Fort Vancouver, W.T."

CHAPTER XII.

At this period Rear-Admiral Baynes, in command of the British fleet in the Pacific, had under him five ships, carrying an aggregate of 167 guns, and upwards of 2,000 men. This force included sappers and miners and marines. He appears to have contented himself, however, with a demonstration of his force, and this notwithstanding the orders of Governor Douglas that a landing of British troops should be effected. The Admiral was complimented by the British Government for the line of conduct adopted by him. If the Governor had the full powers of a British Colonial Governor, surely the refusal of Admiral Baynes to carry out the orders issued to him would have been an act of disobedience to superior authority, for which he could not, I should think, have been justly complimented.

On the 14th of August Colonel Casey wrote the following despatch to head-quarters :(1)—

"Head-quarters, Camp Pickett, San Juan Island, W.T.,
"August 14, 1859.

"Captain,—I have the honour to acknowledge the receipt of your two communications, dated the 8th August, and also Special Orders No. 82. Since my last nothing of moment has transpired. The *Tribune* and *Satellite* are now in the harbour, with their broadsides on the landing. I have not been informed what the intentions of the British force in these

(1) American State Papers, p. 167.

waters are, but am of opinion, however, that they have concluded to wait for further instructions from higher authority before violence is attempted. However, it is a wise maxim to be prepared for the worst while hoping for the best. I shall accordingly direct the four companies of artillery at Steilacoom to join me at once.

"In a former communication I asked for five companies and an engineer officer, with a detachment of sappers. I would like to have them sent round on board the United States ship *Active*, which Captain Alden has kindly placed at my disposal for carrying this despatch. The services of the engineer officer and the detachment of sappers would most probably be required but a short time. We are encamped in rather an exposed situation with regard to the wind, being at the entrance to the Straits of Fuca. The weather, at times, is already quite inclement. To maintain the object of our occupation I do not, however, from my present information, think it advisable to change my position. I have enclosed a requisition for 'Sibley' tents, with stores and quartermaster's stores, which I would like to be forwarded by the *Active* on her return. I have also enclosed a requisition for subsistence stores, which should be sent to Fort Steilacoom as soon as they can be supplied from San Francisco. In view of the possible contingencies of the service, it was my intention to draw from Steilacoom, as a depôt, supplies as they would be needed. The *Massachusetts* landed her guns and ammunition yesterday. I have directed that she leave to-day for Port Townshend, and bring all the supplies from the port to this point, leaving there a sergeant and two men to take care of the public buildings and garden. I shall place the 32-pounders in position as soon as possible. With our present appliances, I find them rather difficult to manage. "Very respectfully your obedient servant,

"SILAS CASEY,

"Lieut.-Col. 9th Infantry,

"Commanding troops on San Juan Island.

"Captain Pleasonton, A.A. Adjutant-General,

"Head-quarters, Department of Oregon, Vancouver, W.T."

On the 16th the following instructions were forwarded to him in reply :(1)—

"Head-quarters, Department of Oregon,
"Fort Vancouver.

"COLONEL,—The General commanding has received your reports of the 12th and 14th instant, and accompanying papers, and instructs me to reply as follows :—

"The supplies and stores required for the command of San Juan Island will be forwarded as soon as practicable; the camp and garrison equipage will be shipped on the *Active*.

"The course pursued by you in ordering the four companies from Steilacoom to San Juan Island is approved.

"A detachment of engineers will be sent you by a small steamer; in the meantime have platforms made for your heavy guns, and cover your camp as much as possible by intrenchment, placing your heavy guns in battery on the most exposed approaches; the howitzers to be used to the best advantage with the troops, or in the camp, according to circumstances.

"Select your position with the greatest care to avoid the fire from the British ships. In such a position your command should be able to defend itself against any force the British may land. The General has requested a naval force from the senior officer on the coast, and has notified General Clarke, as well as the authorities at Washington, of the existing state of affairs on the sound. Troops and supplies will be sent to you as fast as they can be collected.

"The General regrets, under all circumstances, your visit to Esquimault harbour to see the British Admiral, but is satisfied of your generous intentions towards them. He instructs you for the future to refer all official communication desired by the British authorities to these head-quarters, informing them at the same time that such are your orders. It is almost needless to inform you that the subjects of Great Britain on San

(1) American State Papers, p. 168.

Juan Island will be treated with the same consideration and respect that is shown to our own citizens.

"I am, Colonel, very respectfully,

"Your obedient servant,

"A. PLEASONTON,

"Captain 2nd Dragoons, A.A. Adjutant-General.

"Lieut.-Colonel S. Casey, 9th Infantry, commanding

"United States troops, San Juan Island, Puget Sound."

In the meantime, on the 14th of August, Mr. Campbell, United States Commissioner, sent a mild remonstrance against the violent measures of the military authorities, which had probably taken a more serious turn than he had at first anticipated, writing to General Harney in the following terms :(1)—

"Steamer *Shubrick*,

"San Juan Harbour, August 14, 1859.

"MY DEAR GENERAL,—Captain Alden is about to leave the harbour of Fort Vancouver, with despatches from Colonel Casey, and I take the opportunity of dropping you a line in relation to the state of affairs resulting from the landing of troops on the island of San Juan.

"When I learned from Captain Pleasonton that Captain Pickett's company was ordered to San Juan, I thought it was a very proper movement for the protection of American settlers from northern Indians, and from the interferences of the Hudson's Bay Company's agents, who had recently been threatening to take one of the settlers to Victoria for trial; and I did not anticipate from it any serious objection on the part of the British authorities of Vancouver's Island—certainly no forcible opposition—troops at various times heretofore having been sent there at intervals, in small detachments, for the protection of the settlers against the Indians.

(1) American State Papers, p. 187.

"But I happened to be making an exploration of the archipelago at the time Captain Pickett arrived, and for several days after he landed I was anchored in this harbour; and I soon saw that it was going to produce great excitement, unless managed with great discretion.

"Before I saw Captain Pickett's instructions, I did not suppose it possible that any collision could arise between the United States and the English troops, and I took it for granted that his duties would be confined to the objects specified hereinbefore. While the boundary line still remains unsettled, and the commission appointed to determine the boundary line still existed, I did not suppose any resistance would be made by Captain Pickett to the landing of the British troops, if they thought proper, as a matter of protection to English subjects on the island, to station a force on the island. It did not seem to me, under present circumstances, that we should be justified in going to the extent of refusing to allow them to land troops for peaceable purposes. I found that Captain Pickett had different views, derived from your instructions, which he confidentially showed to me. I perceived that they were susceptible of the interpretation he gave them, though they were not directly mandatory on the subject; and supposing it possible, if not probable, that you might have received instructions from the War Department for the occupation of the island, I felt a delicacy in interfering further in the matter, lest I might be disturbing plans well considered by you, and determined on by the Government. At the same time, as I had no intimation on the subject from the State Department, I felt considerably troubled lest there might be some misunderstanding.

"I was called upon officially by my colleague, Captain Prevost, the British Commissioner for the settlement of the water boundary, to take steps individually, or in concert with him, to protest against the armed occupation of the island, it being intimated that British troops would be landed. As I did not consider it my duty as Commissioner to interfere with the operations of the military forces of either Government, I

declined to take the steps indicated. Thus far no serious results have followed from the presence of troops on the island; but there is a good deal of excitement among the authorities of Vancouver's Island, and, doubtless, a great deal of mortification; and, if I may be permitted to advise, I would recommend caution, so as to prevent, if possible, any collision, which, I think, under no circumstances ought to be allowed to occur.

"However certain may be your conviction that the boundary line according to the treaty should run down the Canal de Haro—and I have never hesitated, when asked, to say that such is the ground I have taken as Commissioner, and that in this, I believe, I will be supported by the Government—still the question has not been authoritatively decided; and unless you have some intimation from the War Department which has governed your actions, I fear that the decided action you have taken in declaring the island American territory may somewhat embarrass the question. I shall be greatly relieved to learn that you have some authority from the Government for the decisive step you have taken, though I do not pretend to ask or desire the information in my official capacity. I thought it possible, if you had no directions from home, that you might be in error on some point regarding the joint commission, and therefore have taken the liberty of letting you know that it still exists, notwithstanding the slow progress made in settling the boundary question.

"I presume Colonel Casey has fully informed you of everything that has taken place since my arrival, and therefore I need say nothing further.

"Hoping you will excuse the liberty I have taken in writing you thus freely, I am, my dear General, very respectfully and truly, your obedient servant,

"ARCHIBALD CAMPBELL.

"Brigadier-General W. S. Harney,
"United States Army."

General Harney replied as follows:[1]—

[1] American State Papers, p. 169.

"Head-quarters, Department of Oregon,
"Fort Vancouver, W.T., August 16, 1859.

"My Dear Sir,—Your communication of the 14th instant has just been received, and I hasten to place you in possession of the facts connected with the occupation of San Juan Island by some of the troops of my command. This step would have been taken before, but I was informed you were *en route* to Washington.

"I enclose for your information a copy of a protest issued by Governor Douglas, Commander-in-chief of the island of Vancouver, to the occupation of San Juan Island, and claiming the sovereignty of said island for the crown of Great Britain; also a copy of my letter to Governor Douglas in reply to his protest.

"You will perceive that in my reply to Governor Douglas, I charge the British authorities of Vancouver's Island with having violated the right of American citizens on the island of San Juan in such a manner and by such means as to leave me no other alternative than to occupy the island for the protection of American interests. In assuming this responsibility I was careful to state distinctly and fully to Governor Douglas the position of my troops on the island of San Juan, and I reiterate to you that the relative claims of the two countries has had nothing to do in the assignment of the troops in question. The British authorities chose to violate treaty stipulations made in good faith, and maintained by the United States in good faith, by attempting to arrest an American citizen on San Juan Island, to carry him to Victoria to be tried by British laws. To prevent a repetition of this outrage, until the Government of the United States could be apprised of it, I have placed troops on the island, with such orders as I have deemed necessary to effect this object.

"With the question of the boundary between the United States and Great Britain, I disclaim having done anything with respect to it in occupying San Juan Island.

"Great Britain has no sovereignty over American citizens on San Juan Island, and every attempt made by her authorities

to advance such claims I shall resist until further orders from the President, to whom I have submitted the whole matter ; in the meantime, I hope the labours of your joint commission will be prosecuted amicably and successfully, for I assure you that no one is more desirous of facilitating your labours than myself.

"I am, sir, with high respect, your obedient servant,

"W. S. HARNEY,

"Brigadier-General Commanding.

"Archibald Campbell, Esq.,

"United States Commissioner,

"North-West Boundary,

"Harbour, San Juan Island, Puget's Sound."

The General, it appears, intended this as a disclaimer of any intention on his part to assert any sovereignty, on behalf of the United States, in respect of the island of San Juan. It may be considered that such disclaimer came somewhat late, and was inconsistent with the tenor of former letters or despatches written by him.

On the 18th of August, General Harney sent the following despatch to General Winfield Scott, Commander-in-chief of the United States army, and being at that time in Washington.(1)

"Head-quarters, Department of Oregon,

"Fort Vancouver, W.T., August 18, 1859.

"SIR,—Since my report of the 8th instant to the Adjutant-General, a copy of which was sent to your office, with accompanying papers, I have received the enclosed correspondence from Lieutenant-Colonel Casey, commanding on San Juan Island, as a record of the events which have occurred at that place; in addition to which I have the honour to report, for the information of the General-in-chief, my own action, based

(1) American State Papers, p. 162.

on the above correspondence, as shown by the enclosed copies to Lieutenant-Colonel Casey and Commissioner Campbell, and also a copy of a communication from his Excellency Governor Gholson, of Washington Territory, containing an assurance of a cordial response by the people of this Territory, whenever it may be necessary to apply for their assistance.

"I enclose a list of the fleet and forces of Her Britannic Majesty on service in Puget Sound, which have been made use of to threaten my command occupying San Juan Island. This armament, it will be seen, contains five vessels of war, 167 guns, 2,140 men, some 600 of which are marines and engineer troops; and when it is known that this force has been employed from the 27th day of July until the 10th day of August—the day on which Colonel Casey with reinforcements reached the island—in using every means in its power, except opening fire, to intimidate one company of infantry but sixty strong, the conviction will be universal that the cause which this large armament had been called upon to maintain must be totally deficient of right, justice, and integrity.

"The senior officer of these British ships of war threatening to land an overpowering force upon Captain Pickett, he nobly replied that whether they landed fifty or five thousand men his conduct would not be affected by it, that he would open his fire, and, if compelled, take to the woods fighting; and so satisfied were the British officers that such would be his course, that they hesitated in putting their threat into execution. For the cool judgment, ability, and gallantry which distinguished Captain Pickett in his command on San Juan Island, I most respectfully offer his name to the President of the United States for his notice, by the preferment of a brevet, to date from the commencement of his services on San Juan Island.

"On the 14th August Colonel Casey had five companies with him on the island, and was busy placing in position eight 32-pounders, taken from the steamer *Massachusetts*, by my orders. By this time four companies more have joined him, making in all nine companies—say five hundred men. These,

with the citizens on the island, can now defend it until a diversion could be made in their favour. From the height of the island above the water it presents many advantages for shelter from the fire of a fleet, and no force could be landed to dislodge Colonel Casey after his guns are in position and his entrenchments are completed. A detachment of engineer troops will proceed by the mail steamer in a day or two for service with Colonel Casey's command.

"The visit of Colonel Casey to Esquimault harbour to see the British admiral, was not anticipated by me, and was a generous act of zeal on the part of the colonel, tending, however, to produce confusion in the minds of the British authorities. I have directed that in future all official communications be referred direct to head-quarters. Some Indian disturbances occurred at Whatcom, on the Sound, about the 7th instant, in which one man was killed. The steamer *Massachusetts* proceeded immediately to the spot, and arrested the ringleaders. Four Indians were killed in the mêlée at Whatcom, and the remaining offenders have been turned over to the civil authority.

"This prompt action has restored quiet to the country around Whatcom.

"I am, sir, very respectfully, your obedient servant,

"W. S. Harney,

"Brigadier-General Commanding.

"Assistant Adjutant-General,

"Head-quarters of the Army, New York."

On the 25th General Harney sent another despatch to head-quarters, and commented upon the letter of Governor Douglas of the 13th of August.

The despatch of the 25th was as follows:(1)—

"Head-quarters, Department of Oregon,

"Fort Vancouver, W.T., August 25, 1869.

"Colonel,—I have the honour to enclose a copy of a despatch from his Excellency Governor Douglas, of Her

(1) American State Papers, p. 170.

Britannic Majesty's Island of Vancouver; also a copy of my reply to the same; both of which papers I request may be submitted for the information of the President of the United States at your earliest convenience.

"Governor Douglas denies that the British authorities of Vancouver's Island were cognisant of the outrage attempted upon an American citizen on San Juan Island, as reported in my communication to the head-quarters of the army, of July 19th, and my letter to you of the 7th instant. This denial, couched as it is in strong language, does not explain how a British ship of war did convey Mr. Dallas, the chief factor of the Hudson's Bay Company, and son-in-law of Governor Douglas, to San Juan Island; that Mr. Dallas landed and threatened an American citizen, by the name of Cutler, with imprisonment at Victoria, to which place he would be taken in a ship of war waiting for him. This threat was not put into execution, for the reason that Cutler told Mr. Dallas if it was attempted he would kill him on the spot. But Mr. Dallas having left the island in the ship of war, the conclusion is irresistible, that Mr. Dallas either had the ship of war under his control by some direct authority from the British authorities, or he was acting independent of that authority in the exercise of powers delegated to him elsewhere.

"If Mr. Dallas can use a British ship of war to overlook the interests of the Hudson's Bay Company on this coast, without the authority of Governor Douglas, or the British admiral, which is just what he has done, according to the facts and Governor Douglas's despatches, then the interests and rights of our citizens have been in greater jeopardy than I have heretofore supposed, and the necessity of retaining the occupation of San Juan Island is still more imperative.

"Governor Douglas has opposed the occupation of San Juan on the ground of sovereignty, and lays great stress upon Mr. Marcy's despatch of July 17, 1855, to Her Majesty's Minister at Washington.

"In a communication to Commissioner Campbell of the North-west Boundary Survey, I have disclaimed any intention

of asserting any sovereignty over the Island of San Juan, beyond that which the necessity of the case has demanded. A copy of this communication has already been sent to you.

"Mr. Marcy's instructions in reference to the conduct of the officers of the two Governments never contemplated the case of a direct aggression on the rights of our people, backed by so powerful a naval force as to create strong surmises of its intentions. Indeed, so extraordinary has been the course of conduct of the British in reference to San Juan, and so evident has been their design to force our people from the island, that I should consider I had been recreant to the high trust imposed on me in not taking possession of the island, it being the only position from which we could defend our rights to advantage. Eight companies are now on the island, with eight 32-pounders, landed from the steamer *Massachusetts*. A detachment of engineer troops are engaged with the troops in constructing a field work to defend their position, and at the same time protect them from any fire from the water. This command is fully supplied for over two months, and is considered now to be able to hold its own, in the event of any difficulty, until reinforcements could arrive. I enclose a copy of Governor Douglas's message to the legislature of Vancouver's Island; also of the *British Colonist*, the Government paper published at Victoria, giving an account of the proceedings of the Assembly in relation to San Juan; also an editorial, complaining that an error had been committed by somebody on their side. Our quick-witted people were aware of that fact nearly two months ago.

"I am, Colonel, very respectfully, your obedient servant,

"WM. S. HARNEY,
"Brigadier-General Commanding.

"Colonel S. Cooper, Adjutant-General U.S. Army,
"Washington City, D.C."

On the 29th he again wrote as follows:(1) —

(1) American State Papers, p. 177.

"Head-quarters, Department of Oregon,
"Fort Vancouver, W.T.

"COLONEL,—I have the honour to enclose a copy of Mr. Marcy's despatch, referred to in Governor Douglas's communication to me of the 13th instant, which was received on the night of the 27th instant, with a note from Wm. A. G. Young, Esq., Acting Colonial Secretary, a copy of the same being also enclosed.

"My communication of the 24th instant had been sent to Governor Douglas before Mr. Young's note and its enclosure were received. The instructions of this document from Mr. Marcy have no bearing upon the question at issue between the British authorities of Vancouver's Island and myself at this time; and my answer to Governor Douglas of the 24th instant would appear as it is, had this copy of Mr. Marcy's despatch accompanied the Governor's letter of the 13th instant.

"The spirit of Mr. Marcy's instructions, when carried out in good faith by the functionaries on citizens of both countries, I not only most heartily approve, but I am satisfied my conduct will stand the most critical and searching investigation in the support of that approval.

"From the time of my assuming the command of this department until the occupation of San Juan Island, I was most careful neither to increase nor change the position of the force on Puget Sound, that there might be no misconceptions of my acts on the part of the British of the good faith which animated me in the observance of treaty stipulations. Time and again our lighthouses were attacked, and the wives and children of our citizens on that coast were brutally murdered by British Indians. Reports reached me that these Indians had been instigated to these acts by the Hudson's Bay Company, in order to drive them from the lands which this immense establishment covet for their own purposes.

"I was well aware of the extent and power of this great commercial monopoly, second only to the East India Company, which has crushed out the liberties and existence of so

many nations in Asia, and committed barbarities and atrocities for which the annals of crime have no parallel. I knew the exacting policy of the Hudson's Bay Company would not hesitate to adopt any measure deemed necessary to insure their success, for their history had shown this; and the history of our wars with England establish the fact that an Indian alliance is their first requirement. With all these truths before me, I was still reluctant to believe that the Hudson's Bay Company would attempt the violation of the solemn obligations of a treaty, or that the British authorities would permit any action to be taken by the Hudson's Bay Company, in case an attempt was desired by them. Judge, then, of my astonishment and mortification, in my late visit to San Juan, to find an unworthy advantage had been taken of my forbearance to outrage our people in the most insulting manner. For this thing was not done in a corner, but in open day. A British ship of war lands Mr. Dallas, the chief factor of the Hudson's Bay Company, who abuses one of our citizens in the harshest manner, and threatens to take him by force to Victoria, for trial and imprisonment. Finding the citizen resolute in the defence of his rights, the Americans were informed the British Indians would be sent down upon them to drive them from the island. I shall substantiate these facts by the affidavits of American citizens of such position and character as cannot leave a doubt of their truth, and showing the attempted denial of Governor Douglas, in his communication of the 13th inst., is only a quibble. These affidavits would have been sent before this, but the disturbances at San Juan, and the difficulty of communication in this country, have delayed their completion.

"It is proper also that I should inform you that Captain Alden, of our navy, commanding surveying steamer *Active*, has reported to me a conversation which he held with Governor Douglas since the occupation of San Juan, in which conversation Governor Douglas stated that, in the event of a collision between the forces of the two countries, he would not be able to prevent the northern Indians from driving our people from the island. This intimation from Governor Douglas is signifi-

cant as indicating the conception of such an action originated before the occupation of the island, and was the foundation of the reports of our people throughout the winter, that I did not consider at the time of sufficient importance as to notice in my official reports. From all the events which have occurred before and since the occupation of San Juan Island I am convinced the British Government have instituted a series of acts aiming at the eventual sovereignty of San Juan Island, in consequence of its paramount importance as a military and naval station. Its position, in connection with the islands adjacent to it, has induced the English to call it the Cronstadt of the Pacific, and with good reason, for the power that possesses it will command a supremacy on this coast.

"In the occupation of San Juan I have assumed a defensive position against the encroachments of the British, either by authority, or through the medium of their Indians, upon the rights, lives, and property of our citizens. I was influenced by no other motive in placing troops upon the island.

"In the matter of ownership, I have carefully investigated the treaty of 1846, defining the boundary between Great Britain and the United States, and I have also personally examined the premises in question under the fairest auspices, and I fearlessly assert a stronger title cannot exist than that which the treaty of 1846 establishes for the United States in San Juan, nor do I believe the British would have ever attempted the hazardous game they are now playing, but for the immense prize at stake.

"I am, Colonel, very respectfully, your obedient servant,

"BRIGADIER-GENERAL HARNEY.

"Colonel S. Cooper,

"Adjutant-General, Washington City, D.C."

On the following day, in another despatch,[1] he specified the number and quality of United States

[1] American State Papers, p. 179.

troops and artillery in the Island of San Juan, and described them as follows:—

"Companies A and C 4th Infantry, and H of the 9th	139
" A, B, D, and M of 3rd Artillery	181
" D 9th Infantry	66
" I 4th Infantry	64
Detachment of Company A Engineers	11
Aggregate	461

"Besides this force, Colonel Casey has with him eight thirty-two-pounders, which I ordered to be taken from the steamer *Massachusetts*.

"The ammunition for these guns consists of round shot, grape, and canister. Captain Pickett's company took with them to the island one six-pounder and two mountain howitzers, and Colonel Casey's command from Steilacoom increased that number by three mountain howitzers.

"This command is busily engaged placing its position under entrenchment, and has been amply supplied with everything necessary and requisite to maintain itself for nearly three months. From the conformation of the island, and the position occupied by the troops, the English ships could not remain in the harbour under a fire from the thirty-two-pounders, but would be compelled to take distance in the Sound, from whence they could only annoy us by shells, which would be trifling. The English have no force that they could land which would be able to dislodge Colonel Casey's command as now posted."

From the description of these lawless proceedings, in which each step on the part of the United States officers constituted a new affront towards the flag of Great Britain, and a new breach of international law, it is refreshing to refer to the resolute and dignified attitude assumed by Lord Lyons, our Minister at Washington.

Totally unaware of what had taken place, Lord Russell, then at the Foreign Office, had, on the 24th of August, forwarded to Lord Lyons a despatch containing a most statesmanlike and powerful argument upon the question of the boundary, proposing as a kind of compromise that a central channel, running through the Haro Archipelago, which had been discovered by Captain Richards, should be adopted.

The position of such channel is sufficiently described in his despatch, which was as follows:(1)—

"Foreign Office, August 24th, 1859.

"My Lord,—Your Lordship was apprised by my predecessor, in his despatch No. 30, of the 28th of April, that instructions would shortly be sent to you with regard to the boundary between Her Majesty's possessions and those of the United States on the north-west coast of North America as fixed by the treaty of 1846. Circumstances prevented that intention from being acted upon previously to the change of Government, and it is now my duty to convey to you those instructions.

"Your Lordship is no doubt aware that the British and American commissioners appointed in 1856 to survey and mark out the boundary differed in opinion as to that portion of it lying between the Gulf of Georgia and Fuca Straits. As far, indeed, as there is only one channel separating the continent from Vancouver's Island, no doubt can be entertained as to the true boundary, which, according to the treaty, runs from the forty-ninth parallel of latitude down the centre of the Gulf of Georgia to its southernmost point, and no question can arise as to that portion of the boundary which is to be drawn through the centre of the Straits of Fuca to the ocean. But with regard to the intermediate portion of the boundary the commissioners differed in opinion, the British commissioner

(1) American State Papers, p. 218.

conceiving that the line should be traced through the channel known as Rosario Straits, while his American colleague maintained that it must be sought for in the Haro Channel. The commissioners defended their respective positions in a correspondence of some length, marked by much ability on both sides. Neither commissioner, however, was prepared to defer to the arguments of the other. The American commissioner rejected an offer to compromise the matter subsequently made to him by his English colleague, and the commissioners, considering that under these circumstances it was useless to continue their correspondence, signed, on the 3rd of December, 1857, a minute recording their disagreement, and adjourning their proceedings until circumstances should render it necessary for them to meet again.

"It is much to be regretted that there was not annexed to the treaty of 1846 any map or chart by which the true meaning of the expressions made use of in the first article of that treaty could have been authoritatively ascertained. The British Commissioner was clearly of opinion that both the boundary intended by the plenipotentiaries who negotiated the treaty of 1846, and also the channel spoken of in the treaty, is the channel known as Rosario Straits, and Her Majesty's Government fully share that opinion; but inasmuch as it is now proved that there are several channels connecting the Gulf of Georgia with Fuca Straits, that circumstance afforded to the American commissioner the means of contesting the view of the case taken by his English colleague, and the result has unfortunately been, that a question which Her Majesty's Government had hoped was finally set at rest by the treaty of 1846, remains still a subject of discussion.

"It may be convenient that I should here pass in review a few of the arguments which led Her Majesty's Government to the well-founded belief that the boundary between the British and American possessions, as fixed by the treaty of 1846, is the Rosario and not the Haro Channel.

"The words of the first article of that treaty are as follows:—

"'From the point on the forty-ninth parallel of north lati-

tude, where the boundary laid down in existing treaties and conventions between Great Britain and the United States terminates, the line of boundary between the territories of Her Britannic Majesty and those of the United States shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel and of Fuca Straits to the Pacific Ocean: Provided, however, that the navigation of the whole of the said channel and straits, south of the forty-ninth parallel of north latitude, remain free and open to both parties.'

"The treaty, therefore, in dealing with the space separating Vancouver's Island from the continent, speaks of two divisions only, viz., the 'channel' and the 'straits'—the channel being that commencing in the Gulf of Georgia, and those straits being the Straits of Fuca. The information acquired by subsequent surveys shows that it might have been more correct to have divided that space into three portions, viz., the Gulf of Georgia, the Straits of Fuca, and the intervening channel or channels by which the Gulf of Georgia and the Straits of Fuca are connected. A glance, however, at Vancouver's chart, which is the only map that the British Government, and, it is believed, the plenipotentiaries of the two Governments had before them, at the time when the treaty of 1846 was negotiated, will suffice to show why the treaty speaks only of the 'channel' and the 'straits.' Vancouver's chart depicts the channel through which he sailed as being an uninterrupted water line, passing in a southerly direction through the Gulf of Georgia, and the passage known by his name, but since called Rosario Straits, into the Straits of Fuca; and on the assumption suggested by a study of that map, that the channel discovered by Vancouver was the main artery connecting the Gulf of Georgia with Fuca Straits, there was no necessity for mentioning the channel which was to serve as the boundary between the British and the American possessions, otherwise than in the terms used in the treaty.

"For the same reason the treaty designates as 'southerly'

the direction which the boundary line is to take, from the westernmost point of the forty-ninth parallel of latitude, considered with reference to Vancouver's chart. The term 'southerly' is a sufficiently accurate description of a boundary to be traced through the centre of the Gulf of Georgia, and of the passage navigated by Vancouver into the Straits of Fuca.

"But if the boundary line had been intended to pass through the Haro Channel, the treaty must have been otherwise worded. The Haro Channel could not have been regarded or described as a portion of the channel commencing with the Gulf of Georgia, for it is neither the channel discovered by Vancouver, nor is it in regard to its general configuration a continuation in a southerly direction of the Gulf of Georgia. Moreover, it was not at that time known, at all events, by Her Majesty's Government, to be navigable for shipping; but, on the contrary, it was supposed to be a dangerous, if not an unnavigable strait.

"The Gulf of Georgia extends as far south as the latitude of Orcas and Lummi islands; consequently the boundary line between the British provinces and those of the United States, which, in accordance with the clearly expressed words of the treaty, runs down the centre of that gulf, must, if it is to be diverted from the southernmost point of that gulf into the Haro Channel, take for some distance, not a southerly, but a westerly direction, describing for that purpose an acute angle before the southerly course spoken of in the treaty could be resumed. Consequently, if the plenipotentiaries had intended that the boundary line should pass through the Haro channel, they would undoubtedly have specified that channel by name, in order to distinguish it from *the channel*—that is to say, the channel used by Vancouver—the channel, namely, which was the continuation of the Gulf of Georgia; and they would also have added some modified qualification of the word southerly, from which it may be inferred that the boundary channel was intended to be one contiguous to the mainland.

"Another argument may be adduced in support of the view taken by the British commissioner, from the fact that the

Canal de Haro, so far from being a continuation of the channel through the Gulf of Georgia, is rather a distinct and independent channel running parallel to that gulf, and having its commencement in the straits separating Saturna and the other islands in that quarter from Vancouver's Island.

"But all these points were so ably argued by Captain Prevost, the British Commissioner, that Her Majesty's Government do not think it necessary to restate them in this despatch. They think it sufficient to refer to his reports, and to state in general terms their conviction, that, whereas the channel through Rosario Straits does, in all essential points, answer to the plain meaning and intention of the treaty, the Haro channel does not do so.

"The commissioner of the United States rested his view of the interpretation to be given to the first article of the treaty mainly on the expression made use of by Mr. McLane, the American minister at this Court in 1846, in reporting to his Government the terms of arrangement which he thought the British Government would probably offer, and on the language employed by Mr. Benton in the Senate when the treaty came under discussion before that body. It appears that both Mr. McLane and Mr. Benton indicated the Canal de Haro; Mr. McLane as that which he thought the British Government would offer as the boundary line, Mr. Benton as that which the Government of the United States had understood as the boundary.

"Her Majesty's Government have not failed to consider, with the attention it deserves, the arguments to be drawn from those statements in favour of the position of the American commissioner; but, while those statements may be taken as evidence of what were the views of Mr. McLane and Mr. Benton, Her Majesty's Government cannot accept them as necessarily proving what were the intentions of the plenipotentiaries who signed the treaty, or what is the fair construction of the treaty itself.

"Her Majesty's Government, indeed, do not think that they should be asked to do so, seeing that the words of the

treaty, which ought to be the guide, do not properly admit of that interpretation; and that it is beyond dispute that the intentions of the British Government were that the line of boundary should be drawn through Vancouver's channel.

"With reference to this point I have to state to you that the Earl of Aberdeen, to whom I am referred, informs me that he distinctly remembers the general tenor of his conversations with Mr. McLane on the subject of the Oregon boundary, and it is certain that it was the intention of the treaty to adopt the *mid-channel of the straits* as the line of demarcation, without any reference to islands, the position, and indeed, the very existence, of which had hardly, at that time, been accurately ascertained; and he has no recollection of any mention having been made during the discussion of the Canal de Haro, or, indeed, any other channel than those described in the treaty itself. I also enclose a memorandum drawn up by Sir Richard Pakenham, the negotiator of the treaty of 1846 (p. 223).

"Such being the state of the question, and Her Majesty's Government being anxious to see it finally settled in a manner satisfactory and honourable to both parties, Her Majesty's Government have had to consider the advice which it behoves them to tender to the Crown with a view to so desirable a result.

"This duty has been rendered, in the present case, a comparatively easy one. Her Majesty's Government cannot doubt that their desire for a mutually satisfactory and honourable settlement of the question is fully reciprocated by the Government of the United States, and they feel confident that the gradual disappearance, one after another, through the good sense and conciliatory spirit shown by both Governments, of these points of difference, which the President of the United States, in a former message to Congress, described as irritating questions, has left no room for doubting that this sole remaining question can also be satisfactorily adjusted.

"Her Majesty's Government trust that, as between this country and the United States, the day for tedious arbitrations, and still more, for hostile demonstrations, is gone by; they see

no reason why this, and, indeed, any other question which may from time to time arise, should not be settled by direct and friendly communication between the two Governments. The true and just interpretation of treaty engagements is the only law by which Her Majesty's Government claim to be governed in their dealings with the United States; the force of argument is the only force to which they desire to appeal; and when the interpretation is asserted to be doubtful, or the argument fails to convince, Her Majesty's Government conceive that the only alternative which befits two great nations, bound to each other by such ties as those which unite Great Britain and the United States, is to endeavour to adjust the difference by mutually honourable compromise of conflicting pretensions.

"Now the result of the survey upon which Captain Richards, of Her Majesty's ship *Plumper*, has been lately engaged, as set forth in the enclosed chart, shows that, in addition to the Rosario Straits and to the Haro Channel, there exists a third navigable passage connecting the Gulf of Georgia with Fuca Straits.

"This third channel is, indeed, reported by Captain Richards to answer, in respect of its central position and southerly direction, to the channel described in the treaty; and, assuming it to have been the intention of the plenipotentiaries that the several channels connecting the Gulf of Georgia with Fuca Straits should be considered for the purpose of the treaty as one channel, it may fairly be argued that this central passage would not only satisfy the requirements of the treaty, but would divide between the two countries, in proportions which each party might consent to, the cluster of islands by which the channel is intersected. The advantage of such a line would indeed be with the United States, for there are only three islands of any territorial importance situated between the Haro Channel and Rosario Straits, viz., Orcas and Lopez islands, and the island of San Juan; and by the adoption of the central channel as the boundary line, the two first named islands would belong to the United States, while only the island of San Juan would remain to Great Britain.

"Your Lordship will accordingly propose to the United States Government that the boundary line shall be the middle channel between the continent of America and Vancouver's Island, as thus defined :—

"Starting from the north in the parallel 48° 50′ north, and the meridian 123° longitude, west from Greenwich (as laid down in the accompanying chart), the mid-channel line would proceed due south, passing half way between Patos Island on the east, and the east point of Saturna on the west, to the centre of Douglas Channel, half way between Waldron and Orcas islands. Thence sweeping round to the south-west, south-east, and south, between San Juan, on the west, and the islands of Orcas, Shaw, and Lopez, on the east, the line would rejoin the 123° meridian, as soon as the safety of navigation would permit, at about one mile to the southward of the Salmon Bank, on the parallel 48° 28′ north, and continue due south along this meridian until it falls into the common mid-channel course through Juan de Fuca Straits.

"It will thus be observed that the meridian of 123° is assumed as the boundary, and is only departed from when forced to do so by the physical interference of the islands.

"This middle channel, though inferior in some respects to the Haro Channel or to Rosario Straits, is described by Captain Richards as being perfectly safe for steamers, and also, under ordinary circumstances, navigable for sailing vessels. Her Majesty's Government, however, do not consider this point as of much importance, since their proposition only extends to making this channel the line of boundary, and they do not propose to alter in any way that stipulation of the treaty which secures to the shipping of both countries the free navigation of the whole of the channels and of the straits—a stipulation advantageous to both parties, and which Her Majesty's Government cannot doubt that the Government of the United States will agree with them in thinking, must, under all circumstances, be maintained.

"It appears to Her Majesty's Government that a boundary line traced through the above-mentioned central channel like-

wise recommends itself for adoption as being in accordance with the principles which regulated the division between the two countries of the islands in the river St. Lawrence.

"Her Majesty's Government further submit to the Cabinet of Washington whether, to a view to mutual convenience, it might not be desirable that the small promontory known as Point Roberts should be left to Great Britain. The point is of no intrinsic value to either Government; but its possession by the United States will have the effect of detaching an isolated spot of small dimensions from the more convenient jurisdiction of the British colony. As the Government of the United States will obtain, under the proposal now made, the more valuable portion of the islands in the straits, Her Majesty's Government consider that the retention of Point Roberts can hardly be an object with them.

"There is one other consideration to which I would wish to draw the attention of the Government of the United States. In the discussions between Lord Ashburton and Mr. Webster, which resulted in the treaty of 1842, the American plenipotentiaries argued upon the relative importance to the two countries of the territory then in dispute. Her Majesty's Government admitted the value of that argument, and acted upon it. The same language was employed in 1846, upon the Oregon question, and on both occasions the United States obtained the larger portion of the territory in dispute, their plenipotentiaries successfully arguing that it was of greater value to the United States than it could be to Great Britain.

"Upon the present occasion this state of things is reversed. The adoption of the central channel would give to Great Britain the island of San Juan, which is believed to be of little or no value to the United States, while much importance is attached by British colonial authorities, and by Her Majesty's Government, to its retention as a dependency of the colony of Vancouver's Island.

"Her Majesty's Government must, therefore, under any circumstances, maintain the right of the British Crown to the

island of San Juan. The interests at stake in connection with the retention of that island are too important to admit of compromise, and your Lordship will consequently bear in mind that whatever arrangement as to the boundary line is finally arrived at, no settlement of the question will be accepted by Her Majesty's Government which does not provide for the island of San Juan being reserved to the British Crown.

"Your Lordship will bring to the consideration of this question the same conciliatory spirit and frank and straightforward bearing which have distinguished you on previous occasions; and I am happy to think that in the President and Secretary of State of the United States you will find statesmen animated by the same honourable dispositions.

"Her Majesty's Government hope that the American Government will appreciate the arguments you are instructed to employ and the spirit in which you will advance them, and Her Majesty's Government will not permit themselves to believe that the negotiation can, under such circumstances, fail of a successful issue.

"It may be proper, however, that you should make the Government of the United States understand that this proposal of compromise which you are thus instructed to lay before them is made without prejudice to the claim, which Her Majesty's Government consider themselves justified in maintaining, to the Rosario Channel as the true boundary between Her Majesty's possessions and those of the United States. They offer the compromise in the hope that its acceptance by the Government of the United States may obviate any further discussion on the subject; but if it is rejected they reserve to themselves the right to fall back on their original claim to its full extent.

"You will read this despatch to General Cass, and will leave with him a copy of it.

"I am, &c., &c., &c.,

"J. RUSSELL.

"Lord Lyons, &c. &c. &c."

This despatch was communicated to Mr. Cass on the 12th of September.

It is, perhaps, unfortunate that the British Government should have offered a compromise of the rights of Great Britain, in the face of the evidence presented by the maps of General Fremont and Mr. Preston. This offer naturally tended to produce erroneous impressions in the minds of Americans; and they began to believe, either that we doubted the validity of our claims to the archipelago, and so were willing to give up a part in order to save the rest; or that we did not feel equal to or inclined for an encounter with them in support of those claims.

CHAPTER XIII.

In the meantime a rumour had reached Lord Lyons that United States troops had been landed on the island, as above described, and he at once, on the 3rd of September, wrote to Mr. Cass as follows:(1)—

"Immediate.]

"Washington, September 3rd, 1859.

"Sir,—It is stated by the newspapers that intelligence has been received in this city that a detachment of United States troops has endeavoured, by order of General Harney, to establish itself on the island of San Juan, in the Gulf of Georgia. It is needless that I should dwell upon the considerations which render me extremely anxious that this statement should not reach Her Majesty's Government without such information respecting its truth or falsehood, and such explanations concerning it as the Government of the United States may be disposed to afford."

Lord Lyons then referred to his former letter of the 12th of May 1859, and stated that inasmuch as he had received no answer thereto, he was the more earnest in requesting Mr. Cass to enable him to send, as speedily as possible, satisfactory information to Her Majesty's Government on the subject to which it referred.

It will have been seen that General Harney had, on the 19th of July, forwarded a despatch to the "Assistant Adjutant-General, Head-quarters of the Army,

(1) American State Papers, p. 224.

New York City," stating that he had established a force on San Juan Island. It does not clearly appear why this despatch was sent to the *Assistant*-Adjutant-General at New York, for I find that on the 7th of August the General forwarded a despatch to the "*Adjutant-General*, Washington City, D.C.," the seat of the Government of the United States. Whatever may have been the reason, it is clear that the forwarding this despatch to New York, while the seat of Government was at Washington, displayed, to say the least, an ignorance on the part of the General, of the consequences which might have resulted from the step he had taken, or a most culpable recklessness. So great, indeed, was the delay occasioned by this remissness, that it was not until the 3rd of September (the date, to be remarked, of Lord Lyons' pressing communication to Mr. Cass), that an answer was forwarded by the Government of the United States.

The Acting Secretary of War was then, it appears, directed by the President, Mr. Buchanan, to write as follows:(1)—

"War Department, September 3, 1859.

"SIR,—Your despatch of the 19th of July last, addressed to the General-in-chief, has been forwarded to this department, and laid before the President for his consideration.

"The President was not prepared to learn that you had ordered military possession to be taken of the island of San Juan or Bellevue. Although he believes the Straits of Haro to be the true boundary between Great Britain and the United States, under the treaty of June 15, 1846, and that, consequently, this island belongs to us, yet he had not anticipated that so decided a step would have been resorted to without

(1) American State Papers, p. 148.

instructions. In cases respecting territory in dispute between friendly nations it is usual to suffer the *status* of the parties to remain until the dispute is terminated one way or the other, and this more especially while the question is pending for decision before a joint commission of the two Governments. If you had good reason to believe that the colonial authorities of Great Britain were about to disturb the *status*, by taking possession of the island and assuming jurisdiction over it, you were in the right to anticipate their action. . . . . The President will not, for the present, form any decided opinion upon your course on the statement of facts presented in your despatch. He will await further details, which he expects to receive from you by the next steamer. He is especially anxious to ascertain whether, before you proceeded to act, you had communicated with Commissioner Campbell, who could not then have been distant from you, and who was intrusted by this Government, in conjunction with the British commissioner, to decide this very boundary question.

"In the meantime care ought to be taken to apprise the British authorities that possession has thus been taken solely with the view of protecting the rights of our citizens on the island, and preventing the incursions of the northern Indians into our territory, and not with any view of prejudging the question in dispute or retaining the island, should the question be finally decided against the United States.

"Very respectfully, your obedient servant,

"W. R. DRINKARD,

"Acting Secretary of War.

"Brigadier-General Wm. S. Harney,
"Commanding Department of Oregon, Fort Vancouver."

I would call attention to the tone of this letter, or despatch, and will sum up the state of things which called it forth.

Doubts had arisen between two friendly nations as to the proprietary right to an island, and the settle-

ment of those doubts had been referred by a solemn and binding agreement to two commissioners, chosen, one by each party. These commissioners had differed, and the question, by the mutual consent of the parties, remained in abeyance. Whilst affairs so stood, an officer, in high command in the forces of one nation, had rudely taken possession of the disputed territory, had assumed jurisdiction over it, had grossly and wantonly insulted the flag of the other nation, whose soldiers were compelled to receive his insults or plunge their country into war—a wanton breach of the first principles of international law, that nations as well as men should abide by their agreements. Such was the position in which the United States and Great Britain were placed, and such was the despatch which, to the President of the United States, seemed befitting the occasion.

It may be convenient to insert here General Harney's reply, which was as follows :(1)—

"Head-quarters, Department of Oregon,
"Fort Vancouver, W.T., October 10, 1859.

"Sir,—I have the honour to acknowledge the receipt of your communication of the 3rd of September last, transmitting the views of the President of the United States in reference to the military occupation of San Juan or Bellevue Island, as reported in my despatch of the 19th of July last, addressed to the General-in-chief.

"Since the date of that despatch other events have transpired, which are conclusive in showing that the intentions of the colonial authorities of Great Britain were directed towards assuming a positive jurisdiction over the island of San Juan. These occurrences have all been reported in a regular course of correspondence to the General-in-chief, duplicates having been transmitted to the Adjutant-General.

(1) American State Papers, p. 185.

"The President expresses an anxiety to ascertain whether, before proceeding to act, I communicated with Commissioner Campbell, who was intrusted by the Government of the United States, in conjunction with the British commissioner, to decide the boundary question. In reply, I desire to inform his Excellency, the President, that no official communication had passed between Commissioner Campbell and myself in reference to the boundary, previous to the occupation of San Juan Island by Captain Pickett's company, for the reason that no exigency had arisen requiring it. In the personal interviews I have had with Commissioner Campbell since my arrival on this coast, he has always assured me that there could be but one solution of the boundary question under the treaty of June 15, 1846, and that was to be obtained by taking the mid-channel of the 'Canal de Haro,' or Straits of Haro, as the boundary line between the United States and Great Britain. He has several times stated that a strict construction of the treaty will not only give us the Haro group of islands, of which San Juan is the most important, but also the Saturna Island, which is yet nearer to Vancouver. This island, he said, he was willing to give to Great Britain, under a liberal and generous construction of the treaty.

"In each of these interviews Commissioner Campbell has deplored the course pursued by the British Government in the opposition they made to the settlement of this question, and the delays continually seized upon by the British Commissioner to prevent coming to an early decision. Commissioner Campbell appeared to be earnestly impressed with the conviction that the British Government intended to keep this an open question until some future time, when they could advance their claims to better advantage, as they had no foundation in justice or right. I saw Commissioner Campbell for the last time at Simiahmoo, on the 7th day of July last; at that date neither he nor myself had any knowledge to induce us to believe the colonial authorities of Great Britain had attempted to assume jurisdiction over San Juan. When Captain Pickett's company arrived at San Juan, it appears Commissioner Camp-

bell was making an exploration of the islands in the Haro group, and visited San Juan the day Captain Pickett landed; he rendered the captain every assistance, and approved the course that had been pursued. Captain Pickett landed on the 27th of July, and Commissioner Campbell remained in that vicinity until the 16th of August, when I received a private communication from him, a copy of which is enclosed. I immediately answered it officially, giving him my reasons in full for occupying San Juan; this would have been done at the time Captain Pickett's order was issued, but I did not know his whereabouts until I received his communication. A copy of this answer to the Commissioner is also enclosed, and a copy of his reply dated the 30th of August.

"I would respectfully call the attention of the President to the unqualified denial of Governor Douglas, in his despatch of the 13th of August, that any attempt had ever been made to arrest an American citizen, and convey him to Victoria to be tried by British laws. At the very moment this denial was being penned, three British ships of war were in that harbour by the orders of Governor Douglas, to support a British stipendiary magistrate, sent by Douglas to arrest the same American citizen (Cutler) of San Juan, who would have been arrested but for the positive interference of Captain Pickett; indeed, so pressing and urgent were the British to possess themselves of Cutler that Captain Pickett did not hesitate to report his capture could only be averted by occupying the island in force.

"Such are the facts of this case, in which the British Government furnished five ships of war, carrying one hundred and sixty-seven guns and from two to three thousand men, to an unscrupulous colonial governor for the purpose of wresting from us an island that they covet. Such Punic faith should never be tolerated, however plausible the pretext upon which it may be founded.

"I am, Sir, very respectfully, your obedient servant,

"Wm. S. Harney,

"Brigadier-General Commanding.

"Hon. Secretary of War, Washington City, D.C."

On the 7th of September Lord Lyons wrote to Mr. Cass as follows :(1)—

"Immediate.] "Washington, September 7, 1859.

"Sir,—When I had the honour of waiting upon you, at your request, at the State Department, on the 5th inst., you were so good as to say that although you were not yet in possession of sufficiently detailed reports to enable you to reply at once to the note in which I had, two days before, asked for explanations with regard to the alleged occupation of the island of San Juan by United States troops, you would, nevertheless, verbally give me such information as it was in your power to afford.

"You then did me the honour to state to me that the only official account which had reached the Government was a report from General Harney, which had been forwarded from New York by General Scott, and that the substance of that report was that General Harney had found it necessary, in consequence of a requisition from United States citizens, to send to the island of San Juan a detachment to protect those citizens from the Indians, and from ill treatment on the part of the English, and that he had accordingly sent one company of soldiers for this purpose, and held another in readiness to send also in case of need.

"You proceeded to inform me that the President had directed the War Department to apprise General Harney that the Government of the United States considered that the principle to be observed with regard to disputed territory was, that the actual status should be maintained; that, consequently, he was by no means to take possession of the island of San Juan, or to set up any jurisdiction there. You added, however, that orders had not been sent to withdraw the United States troops. Those troops, you said, would be instructed to confine themselves strictly to the protection of American citizens, but it might, you added, be necessary that they should remain at San Juan for that purpose.

(1) American State Papers, p. 225.

"Finally, you did me the honour to request me to acquaint Her Majesty's Principal Secretary for Foreign Affairs with what you had said, and especially to assure his Lordship, from the President and from yourself, that General Harney had not acted upon orders from the Government, but entirely upon his own responsibility.

"I had just time, after my return home, to write a report of the information which you had thus given me to dsipatch to Lord John Russell by the messenger who was about to set out to meet the royal mail steam packet at Boston. I made that report almost exactly in the words which I have used in repeating above the substance of your communication to me.

"The newspapers of this evening announce the arrival of a mail bringing full intelligence respecting the disembarcation of the United States troops on the island of San Juan. I feel confident that you will hasten to afford me the information and explanation for which I applied in the note to which I have already referred. But I am so desirous that these explanations should reach Her Majesty's Government as nearly as possible simultaneously with the intelligence of the occurrences at San Juan, that I take the liberty of reminding you that I shall be able to send by telegraph to Halifax, in time to be forwarded to London by the royal mail steamer, any information which you may do me the honour to give me in the early part of to-morrow. I am rendered particularly anxious upon this subject by observing among the news inserted in the evening journals the following document, purporting to be an order issued by Captain Pickett, commanding the party of United States troops which has landed on the island:—

"'Military Post, San Juan Island,

"'Washington Territory, July 27, 1859.

"'I. In compliance with orders and instructions from the General commanding, a military post will be established on the island, on whatever site the commanding officer may select.

"'II. All the inhabitants of the island are requested to

report at once to the commanding officer in case of any incursion by the northern Indians, so that he may take such steps as he may deem necessary to prevent any future occurrence of the same.

"'III. This being United States territory, no laws other than those of the United States, nor courts, except such as are held by virtue of such laws, will be recognised or allowed on this island.

"'CAPTAIN PICKETT.

"'By order.'

"I have the honour to be, with the highest consideration, Sir, your most obedient humble servant,

"LYONS.

"Hon. Lewis Cass, &c. &c. &c.

"You are doubtless aware that I have the means of transmitting confidential communications by telegraph in a cypher which can be understood only at the Foreign Office in London. "L."

Mr. Cass replied as follows:(1)—

"Department of State, Washington,
"September 8, 1859.

"MY LORD,—Your note of yesterday reached me this morning. Your note of the 3rd instant, to which you refer, was received the next day after its date, Sunday; and on Monday, the day following, as there was not time to write you before the departure of your messenger, I requested an interview with your Lordship, during which the conversation took place which is recapitulated in your last note. I mention these circumstances in explanation of their delay of two days, to which your Lordship has referred.

"The conversation is correctly reported, with one exception. The exception is where you understood me to say 'that conse-

(1) American State Papers, p. 226.

quently he (General Harney) was by no means to take possession of the island of San Juan, or to set up any jurisdiction there.' I have already explained to your Lordship why I could not have made this remark, and I now beg leave to add that in attributing it to me you misunderstood my views.

"No information respecting occurrences at San Juan has reached the Government since the receipt of General Harney's report.

"I avail myself of this opportunity to renew to your Lordship the assurance of my high consideration.

"LEWIS CASS.

"Lord Lyons, &c., &c., &c."

The aspect of affairs was now most serious, and it became evident to the United States Government that the high-handed behaviour of General Harney would inevitably lead to an outbreak of hostilities between the two countries. It is possible that the popularity of that officer in the Western States rendered his supercession a difficult task, and that the only resource left was to send out an officer of higher rank. General Winfield Scott was accordingly directed to proceed to Washington Territory and to take the command of the United States forces in that district. On the 15th of September, Mr. Cass wrote a letter to Mr. Gholson, the Governor of Washington Territory, from which the following is an extract:(1)—

"SIR,—The information which has reached here, showing the serious state of things connected with the Island of San Juan, has induced the President to order Brevet Lieutenant-General Scott to that quarter to take the command of our military and naval forces, with such instructions as the circumstances

(1) American State Papers, p. 231.

call for. It is to be hoped that a firm and discreet course will prevent the occurrence of any further difficulties there, so that the matter in dispute may be settled by the respective Governments. . . . . I write to you by the direction of the President, who desires that you would co-operate with General Scott, and exert your official authority, as well as your personal influence, to carry into effect the objects committed to him."

The tone of this despatch is interesting, as illustrating the relations which exist between the Supreme Government at Washington and the Governor of one of the Territories of the United States. Does the despatch contain a command, couched in the language of entreaty, and is the Supreme Government powerful enough to enforce its commands? If otherwise, it would not be hazardous to prophesy that the Federation of the United States will, in the course of time, be resolved into a number of independent states—independent, I mean, in respect of their relations with foreign powers. The following instructions were issued to General Scott by the President:(1)—

"War Department, September 16, 1859.

"SIR,—The President has been much gratified at the alacrity with which you have responded to his wish that you would proceed to Washington Territory to assume the immediate command, if necessary, of the United States forces on the Pacific coast.

"He has directed me to call your special attention to the present threatening attitude of the British and American authorities at and near the Island of San Juan. The two Governments have differed on the question of title to this island under the treaty concluded between them at Washington,

(1) American State Papers, p. 160.

on the 15th June, 1846. The decision of this question depends on whether the treaty line, in passing 'from the middle of the channel, on the forty-ninth parallel of latitude, which separates the continent from Vancouver's Island to Fuca Straits,' ought to be run through the Canal de Haro or the Rosario Strait. If through the Canal de Haro, the island belongs to the United States; but if through the Rosario Strait, to Great Britain.

"This is not the proper occasion to discuss the question of title. If it were, it might be shown that all the territory which the American Government consented to yield, south of the forty-ninth parallel of latitude, was the cape of Vancouver's Island. The idea that the treaty intended to give Great Britain not only the whole of that large and important island, but all the islands south of 49° in the archipelago between the island and the continent, was not, at the time, entertained either by the President or Senate of the United States.

"In order to prevent unfortunate collisions on that remote frontier, pending the dispute, Mr. Marcy, the late Secretary of State, on the 14th of July, 1855, addressed a letter to the Honourable Isaac I. Stevens, then Governor of Washington Territory, having a special reference to an 'apprehended conflict between our citizens and the British subjects on the island of San Juan.' In this letter Governor Stevens is instructed 'that the officers of the Territory should abstain from all acts on the disputed grounds which are calculated to provoke any conflict, so far as it can be done without implying the concession to the authorities of Great Britain of an exclusive right over the premises. The title ought to be settled before either party should attempt to exclude the other by force, or exercise complete and exclusive sovereign rights within the fairly disputed limits.' Three days thereafter, on the 17th July, 1855, Secretary Marcy addressed a note to Mr. Crampton, then the British minister at Washington, communicating to him the material portion of his letter to Governor Stevens. Copies of both these letters are herewith enclosed.

"Thus matters stood until General Harney deemed it

proper, for the purpose of affording protection to American citizens on the island and the neighbouring territories of the United States, to direct Captain George E. Pickett, 9th Infantry, 'to establish his company on Bellevue, or San Juan Island, in some suitable position near the harbour at the south-eastern extremity.' At the same time the steamer *Massachusetts* was placed under the orders of Lieut.-Colonel Silas Casey, 9th Infantry, 'for the better protection and supervision of the waters of Puget Sound,' with instructions to co-operate with Captain Pickett. These instructions were promptly executed. Captain Pickett immediately proceeded to the island with his company, and established a military post at its south-eastern extremity.

"It is unnecessary for me to compile for you, from the papers in the Department, a statement of the condition of affairs in and near the island of San Juan, because you will be furnished with copies of all these papers. I would refer you especially to the two despatches of General Harney, dated July 19 and August 7; and to my despatch to him of the 3rd instant, in reply to his of the 19th July. Suffice it to say that they present a condition of affairs demanding the serious attention of the Government.

"It is impossible, at this distance from the scene, and in ignorance of what may have already transpired on the spot, to give you positive instructions as to your course of action. Much, very much, must be left to your own discretion, and the President is happy to believe that discretion could not be entrusted to more competent hands. His main object is to preserve the peace and prevent collision between the British and American authorities on the island until the question of title can be adjusted by the two Governments. Following out the spirit of Mr. Marcy's instructions to Governor Stevens, it would be desirable to provide, during the intervening period, for a joint occupation of the island, under such guards as will secure its tranquillity without interfering with our rights. The President perceives no objection to the plan proposed by Captain Hornby, of Her Majesty's ship *Tribune*, to Captain

Pickett; it being understood that Captain Pickett's company shall remain on the island to resist, if need be, the incursions of northern Indians on our frontier settlements, and to afford protection to American citizens resident thereon. In any arrangement which may be made for joint occupation, American citizens must be placed on a footing equally favourable with that of British subjects.

"But what shall be your course should the forces of the two Governments have come into collision before your arrival? This would vastly complicate the case, especially if blood shall have been shed. In that event, it would still be your duty, if this can, in your opinion, be honourably done, under the surrounding circumstances, to establish a temporary joint occupation of the island, giving to neither party any advantage over the other. It would be a shocking event if the two nations should be precipitated into a war respecting the possession of a small island, and that only for the brief period during which the two Governments may be peacefully employed in settling the question to which of them the island belongs.

"It is a possible, but not a probable case, that the British authorities, having a greatly superior force at their immediate command, may have attempted to seize the island and to exercise exclusive jurisdiction over it, and that our countrymen in those regions may have taken up arms to assert and maintain their rights. In that event the President feels a just confidence, from the whole tenor of your past life, that you will not suffer the national honour to be tarnished. If we must be forced into a war by the violence of the British authorities, which is not anticipated, we shall abide the issue as best we may, without apprehension as to the result.

"I am, sir, very respectfully, your obedient servant,

"W. R. DRINKARD,
"Acting Secretary of War.

"Lieutenant-General Winfield Scott,
"Commander-in-Chief of the United States Army,
"Washington."

General Scott arrived at Fort Vancouver(1) on the 20th of October, and on the following morning had an interview with General Harney, who stated that nothing of importance had occurred on the Island of San Juan since his despatch of the 10th of October, already noticed. It happened, very opportunely, that Captain Pickett arrived at Fort Vancouver on the 21st of October, and he reported that the British men-of-war had, with the exception of the *Satellite*, returned to their usual anchorage, near Victoria.

On the 22nd of October General Scott left Fort Vancouver for Puget Sound, and, on his arrival at Port Townshend, opened a correspondence with General Douglas, in the following letter:(2)—

"Head-quarters of the Army,
"Fort Townshend, October 25, 1869.

"The undersigned, Lieutenant-General and commanding in chief the army of the United States, having been drawn to this frontier by the apprehension of some untoward collision of arms between the forces of the United States and those of Great Britain in and about the Island of San Juan, the sovereignty of which is claimed by both nations, does not hesitate, in the great interests of peace, assumed to be as important to one party as to the other, at once to submit, for the consideration of his Excellency, the following proposition, to serve as a basis for the temporary adjustment of any present difficulty, until the two Governments shall have time to settle the question of title diplomatically.

"Without prejudice to the claim of either nation to the sovereignty of the entire island of San Juan, now in dispute, it is proposed that each shall occupy a separate portion of the same by a detachment of infantry, riflemen, or marines, not

(1) American State Papers, p. 188. (2) *Idem*, p. 192.

exceeding one hundred men, with their appropriate arms only, for the equal protection of their respective countrymen in their persons and property, and to repel any descent on the part of hostile Indians.

"In modification of this basis any suggestion his Excellency may think necessary, or any addition he may propose, will be respectfully considered by the undersigned.

"This communication will be handed to his Excellency by Lieutenant-Colonel Lay, aide-de-camp of the undersigned, who has the honour to subscribe himself,

"With high respect, his Excellency's obedient servant,

"WINFIELD SCOTT.

"His Excellency James Douglas, Esq., C.B.,

"Governor of the Colony of Vancouver's Island

"and its Dependencies, and Vice-Admiral of the same."

In reply the Governor sent a hurried letter by the hands of Lieut.-Colonel Lay, which was as follows :([1])—

"Victoria, Vancouver's Island,

"Night of October 26, 1859.

"His Excellency Governor Douglas authorises me to say that, having yet had no time to consider in detail the proposition offered by Lieutenant-General Scott, nor to consult with his official advisers here, he is at a glance satisfied that no obstacle exists to a completely amicable and satisfactory adjustment (continuing throughout the period of diplomatic discussion respecting the title to the island of San Juan), either upon the plan suggested by General Scott, or some other that may be mutually agreed to after advisement.

"His Excellency has read this memorandum, and retains a copy.

"G. W. LAY,

"Lieutenant-Colonel U.S. Army."

([1]) American State Papers, p. 193.

Subsequently, the Governor wrote more fully, and expressed his views as follows:(1)—

"Victoria, Vancouver's Island,
"October 29, 1859.

"SIR,—I have had the honour of receiving by the hands of Lieutenant-Colonel Lay your note of the 25th instant, communicating to me the reasons which have drawn you to the frontier of Washington Territory, and, for the great interests of peace, making a proposition to serve as a basis for the temporary adjustment of the present difficulty, arising out of the occupation of the island of San Juan by troops of the United States.

"2. In the first place, I beg you will permit me to offer you my warm congratulations upon your arrival in this neighbourhood, and the assurance of my earnest desire to co-operate with you in the most cordial spirit. I thank you for the frank and friendly tone which characterises your note, and I trust you will believe me when I say that if I am not able entirely to accede to your views, it proceeds solely from the necessity which exists under present circumstances that I should take no step which might in the least embarrass the Government of Her Britannic Majesty in any line of action which they might think fit to adopt. You have been specially accredited by the Government of the United States, and I fully appreciate the fact; but I, on the contrary, am not in possession of the views of Her Majesty's Government on this matter, and, therefore, am not at liberty to anticipate the course they may think fit to pursue.

"3. You propose, without prejudice to the claim of either nation to the sovereignty of the entire island of San Juan, that each shall occupy a separate portion of the same by a detachment of infantry, riflemen, or marines, not exceeding one hundred men, with their appropriate arms only, for the equal protection of their respective countrymen in their persons and

(1) American State Papers, p. 193.

property, and to repel any descent on the part of hostile Indians. For the reasons above given you can readily understand, sir, that were I to accede to this proposition I should at once be committing Her Majesty's Government, and I believe I should at the same time, on their behalf, be assuming an attitude which I do not think they would now be desirous of maintaining. I admit that the protection of the citizens of both nations who are now resident on the island is a matter which cannot be overlooked or lightly treated, but the principal protection that may be required is from dissensions amongst themselves, and not against hostile Indians, from whom I do not apprehend there is the slightest danger of molestation.

"4. I again assure you that I am most cordially disposed to co-operate with you in the frankest manner to assist in removing any and every cause which might unhappily disturb the particularly satisfactory relations at the present moment existing between Her Majesty's Government and that of the United States; and I conceive that that end can be best attained by replacing matters at San Juan as they were before the landing of the United States troops—the '*status*' established on the moderate and conciliatory views laid down by Secretary Marcy's despatch to Governor Stevens of the 14th July, 1855.

"5. An arrangement on that footing would bring the whole affair to a conclusion satisfactory to both parties, and so highly honourable to the Government of the United States that I feel sure it would at once remove any cause of complaint which Her Majesty's Government might be reasonably expected to entertain.

"6. I would therefore submit, for your consideration, that for the protection of the small British and American population settled on the island there should be a joint civil occupation, composed of the present resident stipendiary magistrates, with such assistants as may be necessary, and that the military and naval forces, on both sides, be wholly withdrawn.

"7. Should it, however, hereafter appear that a military

force is indispensable for protection, I can see no objection to such a force being landed upon San Juan, with such understanding as the British and American authorities may mutually determine upon.

"8. It is no doubt, sir, fresh in your recollection that the *sole* reason assigned to me by General Harney for the occupation of San Juan was to protect the citizens of the United States from 'insults and indignities' offered them by the British authorities at Vancouver's Island. In my reply I, in the most earnest and emphatic manner, repudiated the aspersion, and endeavoured to prove to General Harney, that for the cause alleged, there was no necessity for the presence of United States troops on the island of San Juan; and I therefore begged, for the sake of peace, that he would withdraw the troops. He, however, declined to do so, upon the plea that he had no assurance that American citizens would continue to be free from molestation from the British authorities. I feel confident, sir, that I need not renew to you my assurance that the British authorities in Vancouver's Island have no intention, under existing circumstances, to interfere with any of the citizens of the United States who may be resident upon San Juan, and I therefore anticipate that a consideration of these facts, together with those before mentioned, will remove any difficulty you may have apprehended touching the withdrawal of the United States troops from San Juan, and I earnestly trust will induce you to entertain with favour the proposition I have made.

"9. I hope, sir, I may have the pleasure of meeting you personally, when minute details could be so much better discussed than by letter; and it would indeed be a source of gratification to me to have the honour of welcoming to the shores of Vancouver's Island an officer so highly distinguished as he whom I now have the honour of addressing, and who, I beg, will allow me to subscribe myself as his most obedient humble servant, "JAMES DOUGLAS.

"Lieutenant-General Winfield Scott,
"Commanding in chief the Army of the United States."

The reply of General Scott was in the following terms :(1)—

"Head-quarters of the United States Army,
"False Dungeness Harbour, W.T.,
"November 2, 1859.

"I have the honour to acknowledge your communication of the 29th ultimo (the receipt of which has been much delayed by winds and fogs), in reply to mine dated four days earlier.

"It is with regret I learn that the basis for the settlement of the immediate San Juan difficulty I had the honour to submit has not received your acceptance, and that sentiment is deepened at finding myself unable to accept your proposed substitute. We ought not, however, to despair of finding the means of maintaining the peace of the frontier till the good sense and good feelings of our Governments shall have had time to supervene and directly to dispose of the whole subject of the disputed island for ever.

"Your Excellency seems to regard the preliminary evacuation of that island by the American troops as a *sine quâ non* to any adjustment of the immediate question before us. I am sure that at the date of the instructions which brought me hither, and in the anxious interviews between Mr. Secretary Cass and Her Britannic Majesty's Minister, Lord Lyons, residing near the Government of the United States, no such suggestion was made by his Lordship, or it would not only have been communicated to me, but have, in all probability, stopped this mission of peace.

"You 'submit for [my] consideration that for the protection of the small British and American population settled on the island there should be a joint civil occupation, composed of the present resident stipendiary magistrates, with such assistants as may be necessary, and that the military and naval forces on both sides be wholly withdrawn.'

(1) American State Papers, p. 194.

"It strikes me, as a decisive objection to this basis, that if a magistrate (judge or justice of the peace) could be legally (except by treaty between sovereign powers) established on neutral territory, such functionary could not be subjected to the orders of any officer of the United States army, nor even to the direct control of the President of the United States, though appointed by an American territorial governor claiming jurisdiction over the disputed territory, and therefore not to be considered a fit person to be entrusted with matters affecting the peace of two great nations. Besides, I have adopted the impression of my countrymen generally on this frontier, that the few citizens settled on the San Juan island, though, like all other American pioneers, brave, and possessed of effective weapons for defence and attack, do in reality stand in need of troops for protection not only against predatory bands of Indians coming from foreign parts, but also from such bands residing within our own limits. A marauding descent of this kind was made but a few weeks since upon the village of Whatcom, in Bellingham Bay, when a small detachment of soldiers was actually sent from the disputed island to protect the villagers against a threatened renewal of the outrage! (I am but just returned from that village.)

"Moved by the foregoing considerations, and the spirit of peace which is known to animate our Governments, I will respectfully ask your Excellency to review your decision on my original proposition, which, the better to show its probable workings if adopted, I have somewhat elaborated in the accompanying '*Project of a temporary settlement, &c.*' I am persuaded that, on mature reflection, you will find nothing in it to hurt English pride or to prejudice English interests, but much to soothe past irritations on both sides, and to prevent any local conflict. The details of the plan are no doubt susceptible of improved modifications, but I must candidly say that I do not see how I can positively consent to a change in the principle.

"Highly appreciating the personal compliments of your Excellency, and reciprocating the kind feelings which prompted

them, I have the honour to remain, with high consideration, your Excellency's most obedient servant,

"WINFIELD SCOTT.

"His Excellency James Douglas, Esq., C.B.,
"Governor of the Colony of Vancouver's Island and
"its Dependencies, and Vice-Admiral of the same."

The General enclosed also the following "Project of a Temporary Settlement, &c.:"[1]—

"Whereas the island of San Juan, in dispute between the Governments of the United States and Great Britain, is now occupied by a detachment of United States troops, protection against Indian incursions having been petitioned for by American citizens resident thereon, and against such occupation a formal protest has been entered on behalf of Her Britannic Majesty's Government by his Excellency James Douglas, Esquire, C.B., Governor of the Colony of Vancouver's Island and its Dependencies, and Vice-Admiral of the same—

"It is now proposed by Lieutenant-General Scott, commanding in chief the Army of the United States, in behalf of his Government, and in deference to the great interests of the two nations, that a joint occupancy be substituted for the present one, which proposition being accepted by his Excellency, it is hereby stipulated and agreed between the said Scott and the said Douglas that the substitution without prejudice to the claim of either Government to the sovereignty of the entire island, and until that question shall be amicably settled, shall consist of two detachments of infantry, riflemen, or marines, of the two nations, neither detachment of more than one hundred men, with their appropriate arms only, and to be posted in separate camps or quarters, for the equal protection of their respective countrymen on the island in persons and property, as also to repel descents of marauding Indians.

"And whereas pending such joint occupation a strict police over the island will be necessary to the maintenance of friendly

[1] American State Papers, p. 196.

relations between the troops of the two nations, as well as good order among the settlers, it is further stipulated and agreed between the parties, signers of these presents, that the commanding officer of each detachment composing the joint occupation shall be furnished with an authenticated copy thereof by the respective signers, to be regarded as a warrant and command to the American commander from the said Scott, and to the British commander from the said Douglas, to seize and confine, or to banish from the island, any person or persons whatsoever found or known to be engaged in fomenting any quarrel or misunderstanding between the officers or men of one of the detachments and the officers or men of the other, and, further, to treat in like manner all other offenders against the peace and good order of the island; it being, however, expressly understood and enjoined that such measures of correction shall only be applied to American citizens, or persons claiming to be such, by the American commander, or to British subjects, or persons claiming to be such, by the British commander."

The answer of Governor Douglas was as follows:(1)—

"Victoria, Vancouver's Island,
"November 3, 1859.

"SIR,—Lieutenant-Colonel Lay yesterday placed in my hands your despatch of the 2nd instant, conveying to me your sentiments upon the subject of my proposal for the temporary adjustment of affairs in connection with San Juan, and informing me that you are unable to accept that proposal.

"2. I regret, sir, for many reasons, that you did not accede to my suggestion of a joint civil occupation as a temporary expedient for preserving tranquillity, and especially so because the course you propose to me of a joint military occupation is one which I cannot assent to or carry into effect without the sanction and express instructions of my Government.

"3. I am authorised to maintain all treaties as they exist, but not to alter the provisions or to disregard the stipulations

(1) American State Papers, p. 196.

of any; and, in short, I am sensible that it would not be advisable for me to anticipate, by any action on my part, the instructions I may soon receive from Her Majesty's Government, unless there was an evident and imperative necessity for the adoption of such a course, which necessity, in my opinion, does not exist in the present instance.

"4. I conceive that protection against all ordinary danger to which either British subjects or American citizens residing on the Island of San Juan are exposed may be fully attained without resorting to the extreme measure of a joint military occupation; and, moreover, the expediency of affording protection to individuals who may settle on territory the sovereignty of which has not been determined may justly be questioned. Protection under such circumstances can, indeed, hardly be considered as a duty incumbent on Governments; and, on my part, I am not left in doubt on the subject, as my instructions direct me to announce, with reference to this colony, that protection cannot be afforded to persons who, by wandering beyond the precincts of the settlements and the jurisdiction of the tribunals, voluntarily expose themselves to the violence or treachery of the native tribes.

"5. You must permit me, sir, further to add, that Her Majesty's authorities in this colony have, with respect to the United States, committed no violation of existing treaty stipulations, nor been guilty of any act of discourtesy whatsoever towards the Government of that nation, but have on all occasions during the late exciting events exhibited a degree of forbearance which will, I trust, be accepted as a guarantee that by no future act will we seek to impair the pacific relations existing between Great Britain and the United States.

"6. Should you, sir, after the explanations I have herein given in reference to my official powers and position, proceed to carry out your pacific mission, and divest the large military force now on San Juan of its menacing attitude by removing it from the island, we will instantly withdraw the British naval force now maintained there; and as soon as I receive the instructions of my Government, I shall be glad to co-operate

with you in arranging a plan for the temporary maintenance of order and protection of life and property upon the island.

"7. In the meantime you may rest assured that we will not disturb the '*status*' of San Juan by taking possession of the island, or by assuming any jurisdiction there to the prejudice of the position in which the question of title was placed by Mr. Secretary Marcy and Her Majesty's representative in the year 1855.

"8. Again assuring you of my desire to act with you to the utmost of my power in the most cordial manner and with the utmost frankness and sincerity, and renewing to you my expressions of high consideration and respect, I have the honour to remain, sir, your most obedient and humble servant, "JAMES DOUGLAS.

"Lieutenant-General Winfield Scott,
"Commanding in chief the Army of the United States."

General Scott replied as follows :(1)—

"Head-quarters of the United States Army,
"False Dungeness Harbour, W.T., November 5, 1859.

"SIR,—I have the honour to acknowledge a second communication from your Excellency, dated the 3rd instant. Being assured therein that there is no intention on your part to attempt to dislodge, by force, the United States troops now in the temporary occupation of the Island of San Juan, without instructions to that effect from your Government, and being perfectly persuaded that the very cordial relations which now happily subsist between the United States and Great Britain render the receipt of such instructions extremely improbable, I do not hesitate at once to order the number of the United States troops on that island to be reduced to the small detachment (Captain Pickett's company of infantry) originally sent hither in July last for the protection of American settlers (such protection being petitioned for by them) against neighbouring and northern Indians.

(1) American State Papers, p. 197.

"A copy of my orders in the case I enclose herewith for the information of your Excellency. They will be fully executed as soon as practicable by the employment of the United States propeller *Massachusetts*, the only craft suited to the purpose in these waters.

"I have the honour to remain, with high consideration,
"Your Excellency's most obedient servant,
"WINFIELD SCOTT.

"His Excellency James Douglas, Esq., C.B.,
"Governor of the Colony of Vancouver's Island
"and its Dependencies, and Vice-Admiral of the same."

After the foregoing communication was despatched, the General-in-chief determined to leave Captain Hunt's company on the island, instead of Captain Pickett's, and a copy of his order, after modification, was subsequently sent to Governor Douglas, to replace the one previously transmitted. The following is a copy of the order as finally issued :—

"Head-quarters of the Army,
"United States Propeller *Massachusetts*, W.T., Nov. 5, 1859.

"As soon as practicable, Lieutenant-Colonel Casey, or other commanding officer on the island of San Juan, will proceed to send therefrom all the companies under his orders, except Captain Hunt's, to the posts to which they had previously belonged, viz.: Company I of the 4th Infantry to Fort Townshend; Company A of the 4th and H of the 9th Infantry to Fort Steilacoom; Company D of the 9th Infantry to Fort Bellingham; and last, the Companies of the 3rd Artillery to Fort Vancouver.

"Captain Hunt and his company, and Assistant-Surgeon Craig, will remain on the island till further orders, for the protection of the American settlers.

"Lieutenant-Colonel Casey will cause the heavy guns on

the island to be replaced on board of this propeller, and will send the light battery to Forts Townshend, Bellingham, and Steilacoom.

"By command of Lieutenant-General Scott.

"L. THOMAS,
"Assistant Adjutant-General."

General Douglas replied in the following terms:—

"Victoria, Vancouver's Island, November 7, 1859.

"SIR,—I have the honour to acknowledge your communication of the 5th November, announcing your intention to order the withdrawal of certain companies of United States troops, now in temporary occupation of the Island of San Juan, and your intention to leave Captain Pickett's company of infantry for the protection of the American settlers against neighbouring and northern Indians, and transmitting a copy of your orders in that case to the commanding officer in the Island of San Juan.

"2. I shall have much pleasure in communicating your intention to Her Majesty's Government, who will no doubt accept it as a proof of the desire of the United States to restore the former status of the disputed territory.

"3. I trust, sir, that instructions will be issued to the officers of the United States, directing them to abstain from all acts in the disputed territory which are calculated to provoke conflicts, and in no case to attempt to exclude British subjects by force, or to interfere with them in any manner, or to exercise sovereign or exclusive rights within the disputed limits; and on our part Her Majesty's authorities will be enjoined to abstain from any acts of interference, or of exclusive jurisdiction, until the question of title is settled.

"4. In that way I sincerely hope that all collision may be avoided.

"With every assurance of esteem, I have the honour to be sir, your most obedient servant, "JAMES DOUGLAS.

"Lieutenant-General W. Scott,
"Commanding in chief the United States Army."

Some letters then passed between Governor Douglas and General Scott, with reference to the complaint of one William Moore, a British subject, who had been seized by the United States military authorities on the island of San Juan, and had been compelled by them, as a penalty for an offence alleged to have been committed by him, to work in the trenches which they were making to fortify the island against the British.

The correspondence is unimportant, except as showing the difficulties arising whenever there is a conflict of two jurisdictions, and I shall not further allude to it.

Nothing could exceed the courtesy of General Scott, and he was careful to place upon the island an officer upon whom he could rely as capable of carrying out his conciliatory intentions. It will be seen that General Harney, backed by the authorities of Washington Territory, did his utmost to thwart his friendly policy.

The orders issued to Captain Hunt were as follows :(1)—

"Head-quarters of the Army, U.S. Propeller *Massachusetts*,
"Off Port Townshend, W.T., November 9, 1859.

"Sir,—Your company, with only its appropriate arms, is to be left alone on San Juan Island, when you will revert to the instructions from the head-quarters of the Department of Oregon, dated July 18, 1859.

"For your information and guidance, I put under cover with this copies of the General's communications to the Governor of Vancouver's Island, dated the 5th and 9th instant respectively, as also a copy of his special orders on the same

(1) American State Papers, pp. 199—201.

subject. These papers will show you the spirit in which it is expected you will execute the delicate and important trust confided to you, the General having full confidence in your intelligence, discretion, and (in what is of equal importance in this case) your *courtesies*.

"It is, further, the direction of the General, that after the departure of Captain Pickett's company you occupy his part of the camp, where your men will be better sheltered during the winter, and also be further removed from the establishment of the Hudson's Bay Company. Captain Pickett will, of course, be at liberty to take back to Fort Bellingham the property carried over to the island, such as doors, window-sash, &c., as also his company property, but it is hoped that some part of the excellent shelter he erected may be transferred to you.

"I am, sir, very respectfully, your obedient servant,

"L. THOMAS.

"Captain Lewis C. Hunt,
"Commanding Company C, 4th Infantry, San Juan Island."

On the same date (Nov. 9th) General Scott directed that a copy of these orders, with other papers, should be forwarded to General Harney, and that a letter should be written to him, from which the following is an extract:(1)—

"These papers will show you to what extent the General has interfered in the affairs of the Department of Oregon, except that he has made free use of the United States propeller *Massachusetts*, on board of which vessel he made his head-quarters.

"Captain Hunt will be left on the island of San Juan, under your instructions of July 18, modified by my letter to him dated the 7th instant; but the General-in-Chief wishes it to be remembered that the sovereignty of the island is still in dispute between the two Governments, and, until definitively settled by them, that British subjects have equal rights with American citizens on the island."

(1) American State Papers, pp. 202, 203.

Notwithstanding the precautions he had taken, General Scott was unwilling to leave General Harney in command of the district which was contiguous to the disputed territory, and he made an unsuccessful attempt to remove the General to distant command. The following letter explains itself:[1]—

"Head-quarters of the Army,
"St. Helen's, Oregon, November 15, 1859.

"SIR,—Intending at the first moment to urge that the two departments on the Pacific should be thrown back into one, and being aware of your preference for that having St. Louis as its head-quarters, I have already suggested to you a change. Another motive has just occurred to me for renewing the subject.

"I have no doubt that one of the preliminary demands which will be made by the British Government upon ours, in connection with your occupation of the island of San Juan, will be your removal from your present command.

"In such an event, it might be a great relief to the President to find you, by your own act, no longer in that command.

"I make the suggestion from public considerations solely, and have not received the slightest hint to that effect from Washington.

"To take effect in conformity with your own wishes, I enclose herewith a conditional order to repair to St. Louis, Missouri, and assume the command of the Department of the West.

"If you decline the order—and I give you leave to decline it—please throw it into the fire; or, otherwise, before setting out for the east, call your next in rank to you, and charge him with the command of the Department of Oregon.

"We have been forced into this river by a defect in a

[1] American State Papers, p. 203.

boiler, and to take in a new supply of coal. I may not have time to hear in reply from you on this side of the continent, unless we arrive at San Francisco too late for the Panama steamer of the 20th instant, which we begin to fear.

"I am, sir, very respectfully, your obedient servant,

"WINFIELD SCOTT.

"Brigadier-General W. S. Harney, Commanding
"Department of Oregon, Fort Vancouver, W.T."

A special order was enclosed, and was as follows :(1)—

"Head-quarters of the Army,
"St. Helen's, Oregon, Nov. 15, 1859.

"Brigadier-General Harney will repair to St. Louis, Missouri, and assume command of the Department of the West. Colonel Wright, 9th Infantry, or the next senior present, will be charged, until further orders, with the command of the Department of Oregon, and will be instructed to repair to Fort Vancouver.

"By command of Lieutenant-General Scott.

"L. THOMAS,
"Assistant Adjutant-General."

General Harney replied with the following :(2)—

"Head-quarters, Department of Oregon,
"Fort Vancouver, W.T., November 17, 1859.

"SIR,—I have the honour to acknowledge the receipt of a communication from the head-quarters of the army, dated St. Helen's, Oregon, November 15, 1859, and signed by the General-in-Chief, enclosing a conditional order for me to repair to St. Louis, Missouri, and assume the command of the Department of the West.

"The General-in-Chief is pleased to express himself in the following language in this communication, viz. :—

"'I have no doubt that one of the preliminary demands

(1) American State Papers, p. 204. (2) *Idem.*

which will be made by the British Government upon ours, in connection with your occupation of the island of San Juan, will be your removal from your present command.

"'In such event it might be a great relief to the President to find you, by your own act, no longer in that command.'

"The General-in-Chief states that is his own opinion in the matter, as he has not received the slightest hint to that effect from Washington, and concludes by giving me the liberty of declining this order.

"In reply to this communication of the General-in-Chief, I desire to inform him that I am not disposed to comply with such an order. I do not believe the President of the United States will be embarrassed by any action of the British Government in reference to the San Juan Island; nor can I suppose the President would be pleased to see me relinquish this command in any manner that does not plainly indicate his intentions towards the public service.

"I am, sir, very respectfully, your obedient servant,

"WM. S. HARNEY,

"Brigadier-General commanding.

"Assistant Adjutant-General,

"Head-quarters of the Army, New York City."

General Harney, accordingly, for a time, retained his command.

The disposition of the settlers in Washington Territory towards Great Britain, and the pleasure with which they regarded General Harney's violent proceedings, are shown by the following resolutions, unanimously passed by its Legislature on the 7th of January, 1860:(1)—

"Whereas it has come to our knowledge that attempts are making, or will be made, to merge the Military Department

(1) American State Papers, p. 207.

of Oregon into the Department of the Pacific, and in case this is not effected, to cause Brigadier-General William S. Harney to be removed from command; and

"Whereas we believe that said Department was established for good and sufficient reasons, which reasons still exist in as full force as when said Department was established, the interior of our Territory being still occupied by numerous tribes of Indians, only restrained from hostilities by the presence of large bodies of troops, and our frontier being still liable to murderous incursions of powerful and savage hordes of Indians living upon a foreign soil; and

"Whereas experience has shown that, in order that these troops may act promptly and efficiently for the protection of our Territory, it is necessary that the head-quarters of the Department should be of convenient access, which would not be the case were it removed to the State of California; and

"Whereas General Harney, in all his official acts while in command of this Military Department, by protecting us from Indians, domestic and foreign; securing and maintaining peace, by revoking those unlawful military orders under which an attempt was made to exclude our citizens from portions of our Territory, which, under the laws, were open to settlement; opening communications between different portions of the Territory; protecting emigration by placing troops on the Island of San Juan, an island which is as unquestionably American soil as any other portion of our Territory; for the protection of American settlers against foreign Indians, and against attempted acts of foreign jurisdiction, has deserved and secured the entire confidence of the people of this Territory: Therefore be it

"*Resolved*, That we, the legislative assembly of the Territory of Washington, earnestly and respectfully protest against any change by which the Military Department of Oregon shall be merged into any other department, and against its head-quarters being removed.

"*Resolved*, That we respectfully and earnestly solicit the President of the United States to continue the present able

experienced, and prudent officer (Brigadier-General Harney) in command of said Military Department.

"*Resolved*, That we firmly believe General Harney has acted in a prudent and proper manner in placing a military force on the Island of San Juan, for the protection of American citizens from foreign savages and wanton aggressions of foreign officials:

"1. Because the island is clearly ours under a fair construction of the treaty.

"2. Because said island is within the Military Department of Oregon, it having been, by an Act passed in 1854, at the first session of the legislative assembly of this Territory, made a part of the organised county of Whatcom, which Act was duly submitted to the Congress of the United States, as by the organic act is required, and has not to this day been disapproved, and is still the law of the land; and

"3. Because, at the time, the circumstances of the case required that a military force should be placed there.

"*Resolved*, That General Harney, having rightfully placed a military force upon said island, would have been recreant to his trust had he failed to support it with all the power at his command when it was threatened with an attack by a foreign nation.

"*Resolved*, That having the fullest confidence in our title to the island, our right should be maintained at all hazard.

"*Resolved*, That we most respectfully ask the proper authorities to revoke the odious military order placing San Juan Island (a portion of Whatcom County) under military rule.

"*Resolved*, That we have the fullest confidence that the President of the United States will act justly and firmly in the premises, and that American rights will be fully vindicated by him.

"*Resolved*, That copies of these resolutions, duly signed and certified, be sent to our delegate in Congress, to be by him submitted to the President of the United States; and also to General W. S. Harney."

It appears that the British troops were not landed upon the Island of San Juan until the 20th of March, 1860, when, by command of Rear-Admiral Baynes, a detachment of Royal Marines, under Captain Bazalgette, was disembarked on the north point of the island.

In point of number they were equal to the company of United States troops under the command of Captain Hunt, and they carried their ordinary arms only. The joint occupation of the island, as thus established, continues to this day.

The orders issued to Captain Bazalgette were as follows:—

"The object of placing you there is for the protection of British interests, and to form a joint military occupation with the troops of the United States.

"As the sovereignty of the island is still in dispute between the two Governments, you will, on no account, interfere with the citizens of the United States; but should any offence be committed by such citizens, which you may think it advisable to notice, you will send a report of it to Captain Hunt, or officer commanding the United States troops.

"American citizens have equal rights with British subjects on the island. Should the officer commanding the United States troops bring to your notice offences committed by any of Her Britannic Majesty's subjects, you will use your best judgment in dealing with the case, and I authorise you, if you deem it necessary, to send them off the island by the first opportunity. If any doubt arise as to the nationality of an offender, you will not act in the case before you have consulted with the United States commanding officer, and not even then, unless your opinions coincide. You will place yourself in frank and free communication with the commanding officer of the United States troops, bearing in mind how essential it is

for the public service that the most perfect and cordial understanding should exist between you, which I have every reason to feel assured you will, at all times, find Captain Hunt ready and anxious to maintain.

"ROBERT LAMBERT BAYNES,
"Rear-Admiral Commander-in-Chief.

"Captain George Bazalgette, Royal Marines,
"Commanding Detachment on the Island of San Juan."

The courtesy of Captain Hunt was not appreciated by the American squatters on the island, and his endeavours to enforce order among them, and to preserve the discipline of his troops met with a determined opposition. I refer to this for the purpose of showing the character (as sketched by a United States officer) of the so-called United States subjects, who had settled upon San Juan, and on whose behalf General Harney felt himself called upon to interfere. On the 7th of March, 1860, certain persons, styling themselves "citizens of the Island of San Juan," presented the following petition to General Harney:(1)—

"GENERAL,—We, the undersigned citizens of this island, beg respectfully to call your attention to the gross and ungentlemanly conduct of Captain Hunt, the officer in command at this station. We ask if he is justified, as a military man, to infringe on the rights and privileges of American citizens? Is he justified in stopping trade, and endeavouring to drive the inhabitants from the island? Such conduct he is guilty of, and, unless immediate steps are taken to prevent any further outrage on his part, not only the service to which he belongs, but the dignity of the country, who boasts her liberty of the subject, will be compromised. By his recent conduct,

(1) American State Papers, p. 214.

the whole of the inhabitants of this island have been insulted, their position as tradesmen and citizens lowered, and he himself become an object of contempt. We, therefore, respectfully ask your attention to this appeal, and trust that either a more sane and proper officer may replace the one now in command, or steps may be taken to prevent any further inquisitorial and unjust interference on his part.

"With profound respect, we beg to subject ourselves, General, your most obedient servants,

"D. W. Darling.	"Dennis McCarthy.
"J. S. Bowker.	"George Bordew.
"B. M. Kennelly.	"John Smyth.
"N. Baker.	"James Frazer."
"Frank Chandler.	

This petition was forwarded by General Harney to Captain Hunt, who wrote the following letter with reference thereto :(1)—

"Camp Pickett, San Juan Island,
"March 30, 1860.

"Captain,—I have the honour to acknowledge the receipt of your communication of the 21st instant, enclosing another which purports to come from citizens of San Juan Island complaining of my conduct as commanding officer on the island.

"I regret being obliged to notice, in any manner, a statement couched in such language, and conveying charges so incredible. It is unnecessary, I am sure, for me to deny that I have interfered with 'trade' or 'tradesmen' beyond the fact of taking action *in behalf* of the citizens of San Juan Island against a number of transient persons, illicit liquor dealers, who had been complained of in the strongest terms by the real settlers, who lived by dealing poison to my men, and who

(1) American State Papers, p. 215.

all, without exception, I believe, have no other stake upon the island than that arising from their ill-gotten gains. I recognise the names of three individuals (and their creatures) who are indignant that I should have interfered with their 'trade,' however illegal.

"For the information of the commanding General, and to give him the fullest proof of the embarrassing position I occupy, unless I choose to shut my eyes to the evils existing upon the island and attempt no remedy, I beg to forward the statement of Mr. Newsom, late magistrate on the island, as also a petition from the bonâ fide settlers. In the present anomalous position of the island all sorts of opinions are held by even the residents as to jurisdiction and authority. They are opposed to Whatcom County jurisdiction in whole or in part, alleging certain grievances. Many of the citizens think that until the question of title is settled the island is properly under military jurisdiction, and would be glad to have it so declared.

"I understood from Judge Fitzhugh last December that, in his opinion, I had full power to act against evil-doers in general; and 'if I found difficulty in that, to arrest them and send them over to him.' In the absence of any fixed and definite jurisdiction, opinions being various, and my instructions general in their character, I have been obliged to act as cases arose, according to circumstances and my judgment.

"At the suggestion and by the advice of Mr. Crosbie, then magistrate, to whom I applied for action against the nuisance of two whiskey shanties in the immediate neighbourhood of my camp, I published an order on the 16th of December declaring the military reserve to embrace an area of four square miles, and directed Frank Chandler and his partner, Dennis McCarthy, and Frazer (understood since to be a British subject), to remove their respective nuisances, giving them the privilege of joining their liquor-dealing brethren in 'town,' which they promptly accepted. The same order forbade, under penalty of prosecution, the trading or having in possession soldiers' clothing, a practice which had

been carried to a great extent by the liquor dealers, a special shop at Victoria for their sale having been kept supplied. Subsequently, James Frazer, who had been permitted to occupy his shanty on the promise of abstaining from liquor traffic, was detected in lying, a number of bottles of liquor destroyed which he had kept concealed beneath his flooring, whereupon he again retired to the 'town.' Drunkenness increasing, I determined that the authors of the mischief should not go on with impunity. I preferred to make use of civil action, when possible, rather than take the shorter method of acting upon my 'reserved' rights, and brought suit against Bowker, Chandler, and Frazer. The first two only were tried, and the jury, in the face of the facts, acquitted. A German Jew, whose establishment was the greatest nuisance of all, who had repeatedly declared his intention of a speedy removal, I made an example of by directing him to remove his liquors off the 'reserve.' It so happened that the order was simultaneous with the arrival of the Jew's boat for the purpose of carrying out his intention of removing his stock altogether from the island, and this coincidence, I presume, has suggested the charge of 'driving' the inhabitants from the island. Finally, Mr. Higgins, the only merchant (*i.e.*, the only person who deals in dry goods, &c.) in the 'town,' who had frequently expressed a fear of his life being attempted by the vile rabble who surrounded him, applied to me for assistance. Many circumstances went to prove that his neighbour, a boatman, Kearney by name, and, as has since appeared, a British subject, had robbed him during his absence of a large quantity of potatoes. Several robberies had occurred about that time; there was no magistrate upon the island, and with some reluctance I yielded to the appeals of Mr. Higgins, and sent a file of the guard to accompany him in the search for his potatoes. This is probably the 'inquisitorial' action referred to, but it was for Kearney to complain, if any one. On the contrary, he expressed his perfect willingness that the military should search his cabin.

"In conclusion, I may be permitted to add, that I con-

gratulate myself upon having won the confidence and best wishes of all the respectable inhabitants of the island.

"I am, sir, very respectfully, your obedient servant,

"L. C. HUNT,

"Captain 4th Infantry, Commanding.

"Captain Alfred Pleasonton,

"Acting Assistant Adjutant-General, Fort Vancouver, W.T."

Captain Hunt also wrote at the foot of the petition forwarded to him :(1)—

"The above was written by a young Englishman from Victoria, whose knowledge of drugs induced me to place him in the hospital, with the view of enlisting him, perhaps as hospital steward. He proved trifling and tricky, and was sent off."

Notwithstanding the defence made by Captain Hunt to the accusations of the American settlers on the island, General Harney decided to remove him from his command, and reinstate Captain Pickett. I think it must be apparent from the orders issued by the General to the last-named officer, that he was determined, at all hazards, to usurp an exclusive jurisdiction over the island on behalf of the civil authorities of Washington Territory, and he probably knew that Captain Hunt would not abet him in the plans he had formed. Indeed, Captain Hunt, in a subsequent letter to the Military Secretary(2) stated that he had no doubt that the replacing of Captain Pickett upon the island was quite independent of complaints of him (Captain Hunt), and that it had long been contemplated. On the 10th of April, 1860, the fol-

(1) American State Papers, p. 215. (2) *Idem*, p. 213.

lowing instructions were issued by General Harney to Captain Pickett:(1)—

"Head-quarters, Department of Oregon,

"Fort Vancouver, W.T., April 10, 1860.

"CAPTAIN,—You will perceive by special orders No. 41, of this date, a copy of which is enclosed, that the General commanding has replaced you of your company on San Juan Island.

"For your information on this position, you will receive, as accompanying papers, the correspondence and instructions of Lieutenant-General Scott, with reference to San Juan Island, with an extract from the orders of Rear-Admiral Baynes, commanding Her Britannic Majesty's naval forces in the Pacific, to Captain George Bazalgette, of the Royal Marines, commanding a detachment of Royal Marines, landed on San Juan Island by the consent of General Scott.

"These orders of Admiral Baynes communicate to his officer that he is placed on the island for the protection of British interests, and to form a joint military occupation with the troops of the United States.

"To meet these orders of the Admiral, and to remove any misconception on the part of the British authorities as to your duties, I am directed to impart to you the following explanations and requirements of the General commanding, a copy of which you will furnish Captain Bazalgette for the information of Rear-Admiral Baynes.

"1. Lieutenant-General Scott has left no orders or instructions with the General commanding to grant a joint military occupation of San Juan Island with British troops; neither has any authority been delegated by the Government of the United States to the General to offer or accept such occupation of that island. The offer made by General Scott, when in command here, was not accepted by Governor Douglas at the time, and consequently concluded that transaction. No arrangement

(1) American State Papers, p. 210.

has been made since to renew it within the knowledge of the General commanding.

"2. The British authorities having submitted the assurance to General Scott that no attempt would be made by them to dislodge by force the United States troops on San Juan Island, they were permitted to land troops for similar purposes to which your command was designed in the original orders conveyed to you in July last, viz., the protection of our citizens from Indians, both native and foreign. In connection with this service, the General commanding takes occasion to present you to Admiral Baynes and the officers with whom you will be brought in contact, as an officer possessing his highest confidence, that nothing will be omitted in maintaining a frank and generous intercourse in all matters coming within your powers to establish a practical solution of the present misunderstanding, which shall prove honourable and satisfactory to all parties, until a final settlement is attained by the Governments.

"3. Under the organic act of the Congress of the United States for the establishment of the territorial government of Washington, the first legislative assembly in 1854 passed an act including the island of San Juan as a part of Whatcom County. This act was duly submitted to Congress, and has not been disapproved; it is, therefore, the law of the land. You will be obliged, consequently, to acknowledge and respect the civil jurisdiction of Washington Territory in the discharge of your duties on San Juan, and the General commanding is satisfied that any attempt of the British commander to ignore this right of the territory will be followed by deplorable results, out of his power to prevent or to control The General commanding will inform the Governor of Washington Territory that you are directed to communicate with the civil officer on the island in the investigation of all cases requiring his attention. In the event of any British interests being involved, you will notify the officer placed there by Admiral Baynes to enable him to propose some arrangement satisfactory to his instructions, as well as those of the civil officer. Let it be understood in case of disagreement of these parties that no action is to be

taken until the case has been referred to Admiral Baynes and the Governor of Washington Territory respectively.

"These suggestions will be acceptable to the conditions which govern the territorial authorities of Washington, while satisfying the obligations of the military service to their own as well as the civil laws of the country, and it is fair to presume they will be adopted by Admiral Baynes, since the tenor of his instructions to Captain Bazalgette is sufficiently liberal to justify this conclusion.

"I remain, Captain, very respectfully, your obedient servant, "A. PLEASONTON,

"Captain 2nd Dragoons, A. A. Adjutant-General.

"Captain George A. Pickett, Commanding Company D,
"9th Infantry, Fort Bellingham, Puget's Sound, W.T."

Certain papers having reference to the removal of Captain Hunt and to the re-appointment of Captain Pickett were forwarded to the Secretary of War by General Scott, with these remarks :([1])—

"These papers are important :—

"1. Brigadier-General Harney has substituted Captain Pickett for Captain Hunt in the command at San Juan Island, reversing my act. My reason for substituting Hunt for Pickett was this: Pickett, on landing on the island in July, 1859, under the orders of Harney, issued a proclamation declaring the island belonged to the United States, and containing (I speak from memory) other points or language extremely offensive (as I learned) to the British authorities; and, as my mission was *one of peace*, I thought it my duty to substitute Hunt for Pickett, after I had named Pickett for the command. Hunt (as our officers informed me) was remarkable for firmness, discretion, and courtesy. The Secretary of State can probably confirm this character of Hunt.

"2. It will be seen by Brigadier-General Harney's instruc-

([1]) American State Papers, p. 212.

tions to Pickett, of the last month (herewith), that Harney considers San Juan Island *as a part of Washington Territory*, and Pickett is directed to acknowledge and respect the *authority of that Territory*. If this does not lead to a collision of arms it will again be due to the forbearance of the British authorities, for I found both Brigadier-General Harney and Captain Pickett proud of their *conquest* of the island, and quite jealous of any interference therewith on the part of higher authority. I beg it may further be remembered that I intimated a doubt to the War Department whether Brigadier-General Harney would carry out my pacific arrangement respecting the occupation of the island with good faith, or even with courtesy, and hence one of my reasons for wishing to relieve him from his command.

"Respectfully submitted to the Secretary of War.

"May 14th, 1860." "WINFIELD SCOTT.

Captain Pickett relieved Captain Hunt on the 30th of April, 1860,[1] and as soon as the intelligence reached Washington [2] Lord Lyons wrote to Mr. Cass, and called his attention to the change which had been made, stating that he was confident that the Government of the United States would lose not a moment in taking measures to arrest the deplorable consequences which would, indeed, be only too likely to follow any disturbance of the settlement so justly and wisely effected by General Scott. He also enclosed a copy of the above instructions of General Harney to Captain Pickett.

Mr. Cass replied as follows:[3]—

"Department of State, Washington, June 8, 1860.

"MY LORD,—I have received your lordship's communication of the 6th instant, enclosing copies of orders issued by

[1] American State Papers, p. 257. [2] *Idem*, p. 256. [3] *Idem*, p. 258.

General Harney to the commanding officer of the United States troops on the island of San Juan, dated on the 10th of April last, and communicated by the General's direction to the officer in command of Her Majesty's troops on the same island, and have lost no time in bringing the subject to the attention of the President.

"I am now instructed to inform you that the arrangement entered into by General Scott in the month of October, 1859, in order to prevent any collision on the island of San Juan between the British and American authorities, pending the negotiations between the two Governments, was strictly in pursuance of a previous arrangement which was made with Mr. Crampton by the Secretary of State of the United States, in July, 1855, and met the full approval of this Government. The orders of General Harney, to which his attention has been called by the note of your lordship, and which appear to be in violation of the arrangement of General Scott, have been read, therefore, by the President, both with surprise and regret. It is earnestly hoped that, upon a full explanation of all circumstances attending them, it may be found that they were not intended to bear the construction which seems naturally to belong to them, and that in any event they will lead to no collision between the American and British authorities on the island. To prevent this as far as possible, instructions will be immediately sent to the commander of the United States troops in that region, revoking the orders of General Harney, and giving full effect to the arrangements of General Scott. A strict inquiry will also be instituted into the conduct of General Harney, with a view to such measures on the subject as may be found necessary, and for this purpose he has been recalled from his command, and ordered to report at Washington.

"I have the honour to be, my lord, with high consideration, your lordship's obedient, humble servant,

"Lord Lyons, &c." "LEWIS CASS.

On the same date the following orders were issued:(1)—

(1) American State Papers, p. 213.

"War Department, June 8th, 1860.

"The Adjutant-General will order Brigadier-General Harney to repair to Washington City without delay.

"JOHN B. FLOYD,
"Secretary of War."

"War Department, Adjutant-General's Office,
"Washington, June 8, 1860.(1)

"Brigadier-General William S. Harney, United States Army, will, on the receipt hereof, turn over the command of the Department of Oregon to the officer next in rank in that department, and repair without delay to Washington City, and report in person to the Secretary of War.

"By order of the Secretary of War.

"S. COOPER,
"Adjutant-General."

By orders of General Scott, Captain Hunt was again placed in command of the United States troops on the island of San Juan.

Of the details of General Harney's reprimand I am ignorant. He was without command for a short time. Whatever the displeasure of the supreme Government, the citizens of the United States highly applauded his conduct, and, according to their custom, they serenaded him night and day during a long period.

The Government of the United States was evidently ashamed of the mode in which the proceedings complained of had been conducted by General Harney and the officers under his command. It is possible that at this juncture a favourable consideration

(1) American State Papers, p. 213.

of the case, on its merits, might have been brought about, the United States Government having allowed itself to be placed in a false position. It is certainly to be regretted that our Government did not insist upon a withdrawal of the United States troops from the island, for the joint occupation has complicated the question, and rendered its settlement more difficult than it would otherwise have been. The island having once been in the quasi-possession of the United States, any one acquainted with the temper and character of American citizens can readily understand that they will consider it as a point of honour to acquire and retain full possession thereof.

CHAPTER XIV.

It is time now to return to the correspondence between the Governments of Great Britain and the United States with reference to the boundary question.

On the 10th of October, 1859, Lord Lyons wrote as follows to Mr. Cass :(1)—

"Washington, October 10, 1859.

"Sir,—Her Majesty's Government have received my report of the verbal communication which you did me the honour to make to me on the 5th of last month, with regard to the recent occupation of the island of San Juan by United States troops.

"It is satisfactory to Her Majesty's Government to learn, as to the past, that General Harney did not act on that occasion upon any order from the United States Government, but entirely on his own responsibility.

"But, as to the future, Her Majesty's Government cannot consider it satisfactory that my note of the 12th of May last should have remained without an answer. They have, consequently, requested me to press for an answer to that note, and to urge that orders be sent to the United States officers not to use military force on disputed territory without direct authority from the President; for Her Majesty's Government cannot but think that if such acts are to take place by the sole direction of subordinate officers, and the President does not disavow them, the consequence must be as evil as if the President had authorised them from the beginning.

(1) American State Papers, p. 229.

"I have the honour to be, with the highest consideration, sir, your most obedient, humble servant,

"LYONS.

"Hon. Lewis Cass, &c. &c. &c."

This letter was followed by another(1) dated

"Washington, October 15, 1859.

"SIR,—I have the honour to inform you that I received this morning, from Her Majesty's principal Secretary of State for Foreign Affairs, a despatch informing me that Her Majesty's Government had had under their consideration my reports of the communications which had taken place between you, sir, and myself, previously to the 14th of last month, relative to the island of San Juan.

"Her Majesty's Government awaited, with anxiety, the further decision of the Government of the United States respecting that island.

"The withdrawal of the United States troops, or an arrangement for joint occupation by British marines and the military force of the United States, would provide for the immediate difficulty.

"But the course most conducive to permanent relations of friendship between the two countries, would be the acceptance of the United States of the fair and equitable proposal contained in the despatch from Lord John Russell, dated the 24th of August last, of which I had the honour to place a copy in your hands on the 12th of last month.

"I am instructed, sir, earnestly to recommend these points to your attention, and to inform you that the course of Her Majesty's Government will be guided by the nature of your reply.

"I have the honour to be, with the highest consideration, sir, your most obedient, humble servant,

"LYONS.

"Hon. Lewis Cass, &c. &c. &c."

(1) American State Papers, p. 230.

Mr. (or General) Cass replied as follows :(1)—

"Department of State,
"Washington, October 22, 1859.

"My Lord,—I have had the honour to receive your lordship's note of the 10th instant, in which you recall my attention to your previous note of the 12th of May, on the subject of the recent occupation of the island of San Juan by troops of the United States.

"In several conversations with your lordship, I have endeavoured to place you fully in possession of such information on this subject as the President has received, and of the general views of this Government with respect to it. You are aware that on the 14th July, 1855, Mr. Marcy, the late Secretary of State, addressed a letter to Governor Stevens, of Washington Territory, with the special purpose of preventing any conflict on the island pending the settlement of the title to it, which was in dispute between the two countries. While this Government had no doubt whatever that the island belonged to the United States, it was quite willing, for this very reason, to await the result of negotiation which might be expected to lead to this conclusion. A copy of Governor Marcy's letter was communicated to Mr. Crampton, then Her Majesty's Minister in Washington, and on the 18th of July, 1855, he replied, 'entirely concurring in the propriety of the course recommended' to Governor Stevens, and expressing his intention to advise a similar course on the part of the local authorities of Great Britain. Nothing had been done on the part of the United States to change this condition of affairs at the time when General Harney thought it necessary, for the protection of American citizens, to direct a military force to take position on the island. In verbally communicating to you these facts, I also informed your lordship that General Scott had been ordered to Washington Territory with a view to ascertain the precise condition of affairs in that region, and with instructions calculated to prevent any further conflict of

(1) American State Papers, p. 230.

jurisdiction on the island, pending the negotiation between the United States and Great Britain, on the subject of their mutual claims to it under the treaty of 1846. The President fully concurs in the opinion expressed by Governor Marcy, that the island is a part of the possessions of the United States, and he confidently hopes that this may be soon established by friendly discussion, without further collision of any character between the citizens and subjects of the two countries residing in the vicinity of the island.

"Thinking it quite right that what has thus been stated in conversation should be repeated in a more distinct and formal manner, the President has instructed me to address to you this note, and to enclose to you copies of the instructions recently issued on the subject by the [acting] Secretary of War to General Scott,(1) and by this department to the Governor of Washington Territory. In the transmission of these copies, I trust you will see renewed evidence of the desire of this Government to maintain the most frank and friendly relations with that of Great Britain.

"I embrace this opportunity of renewing to your lordship the assurances of my high consideration.

"LEWIS CASS.

"Lord Lyons, &c. &c. &c."

Subsequently Mr. Cass wrote to Mr. Dallas, United States Minister at the Court of St. James, a long despatch, reviewing the whole question *ab initio*.(2)

"Department of State, Washington,
"October 20, 1859.

"SIR,—When the treaty of 1846 had been concluded between the United States and Great Britain, it was believed that all controversy concerning the boundary between their respective possessions on the north-west coast of America was

(1) These instructions have been set out above.
(2) American State Papers, p. 231.

for ever set at rest. In order to accomplish this result, the United States had relinquished its title, which it regarded as clear and unquestionable, to all that portion of Oregon Territory which was included between the parallels of 49° and 54° 40′ north latitude, and, for the sake of peace, consented to a deflection from the forty-ninth parallel, so as to leave Vancouver's Island undivided to Great Britain. After these concessions, I need not explain to you with what regret and disappointment this Government now finds its title drawn in question to still other territory, south of the parallel of 49°, its right to which, it was thought, was beyond any possible dispute. When the first doubt concerning it was suggested, it was hoped that it might be readily determined by the Commissioners who should be appointed on the part of both Governments to survey and mark out the treaty line. You are aware, however, that the Commissioners appointed for this purpose were unable to agree as to that part of the boundary which lies between the point of deflection on the forty-ninth parallel and the Straits of Fuca, and that they reported their disagreements to their respective Governments. A new subject of difference has thus arisen between the two countries, the adjustment of which, we are admonished by recent events, cannot be long delayed without serious hazard to their friendly relations. It is doubtless in this view of it that the British Government has recently proposed to the United States to adopt what it regards as a compromise line of boundary between the conflicting claims of the two Commissioners. This proposal is made in a despatch from Her Majesty's principal Secretary of State for Foreign Affairs to Lord Lyons, the British Minister, in Washington, dated August 24, 1859, a copy of which he was directed to furnish to this department, and of which a copy will also accompany this note.

"The President has not failed to consider this despatch with all that attention that is due to the importance of its subject, and he cordially reciprocates the desire expressed by Her Majesty's Government for a 'mutually satisfactory and honourable settlement of the question' in controversy. He

concurs also with Lord John Russell, that after the gradual disappearance, one after another, of so many of these points of difference which have disturbed the relations of the two countries, no reasonable doubt should be entertained that this new question which has arisen will, in like manner, be amicably adjusted. It is impossible, however, to reconcile these just and friendly sentiments of his lordship with the declaration which is made in another part of the same despatch, that the British Government is already determined, under any circumstances whatever, to maintain its right to the island of San Juan:—'The interests at stake in connection with the retention of that island are too important,' it is said, 'to admit of compromise, and your lordship will consequently bear in mind that, whatever arrangement as to the boundary line is finally arrived at, no settlement of the question will be accepted by Her Majesty's Government which does not provide for the island of San Juan being reserved to the British Crown.'

"If this declaration is to be insisted on, it must terminate the negotiation at its very threshold; because this Government can permit itself to enter into no discussion with that of Great Britain, or any other power, except upon terms of perfect equality. And when Her Majesty's Government declares that it will never yield its right to the Island of San Juan, this Government has only to declare a similar determination on the part of the United States, in order to render any further discussion of the subject entirely fruitless. I cannot persuade myself, however, that any such result as this was contemplated by Her Majesty's Government, or that the United States could have been expected to enter upon a negotiation where its own claim was excluded in advance, and the only adjustment possible was that claimed by the opposite party. But for this confidence which he feels in the good intentions of Her Majesty's Government, the President, I am instructed to say, would not feel himself at liberty to entertain the proposition of Lord John Russell, even for the purpose of discussion; and it is only because he believes that the objectionable declaration by which it is accompanied will receive a prompt

explanation or withdrawal, that he has instructed me to offer some observations in respect to it.

"The proposition being a proposition of compromise, assumes, of course, that the difference between the two Governments, as to the meaning of the treaty, in that part of it which is in controversy, is wholly irreconcilable. The President is not prepared, however, to reach this conclusion until every reasonable effort has been exhausted to avoid it, and he cannot help expressing his regret that the British Government should have thought it necessary to abandon the treaty line for a line purely arbitrary, before any discussion whatever had been had on the subject with the United States. It is quite true that the Commissioners of the two countries, who were appointed in 1856, failed to reach an agreement as to the water boundary between Vancouver's Island and the continent, but this very failure may have been induced by the conviction—with which the British Commissioner seems to have entered upon his work—that a disagreement was inevitable. Such a result was even contemplated in the original instructions under which Captain Prevost commenced his labours, and he was authorised, in view of it, to propose the very compromise which is now suggested by Lord John Russell, while he appears to have received substantially the same caution with respect to the island of San Juan, which is given to Lord Lyons in the annexed despatch. Without entering into any comment upon the peculiar character of these instructions, or undertaking to determine how far they influenced the course of the British Commissioner, I think they are calculated to explain, in some measure, the failure of the commission, and to justify the hope which the President still entertains, that the true line of the treaty may yet be agreed upon by the two Governments. The treaty provides that the boundary line shall 'be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of said channel, and of Fuca Straits, to the Pacific Ocean; provided, however, that the navigation of the whole

of said channel and straits south of the forty-ninth parallel of north latitude remains free and open to both parties.'

"It is much to be regretted, undoubtedly—inasmuch as the present controversy has arisen—that there was not annexed to the treaty of 1846 any map or chart by which the true meaning of the expressions made use of in this article could be authoritatively ascertained. Unquestionably, however, this subject was occasioned, and the terms of the article are less precise than they would otherwise have been, in consequence of the conviction of the negotiators of the treaty that their purpose in framing it was too clear to be misunderstood; and that, when this purpose was known, two great nations could never enter into conflict about the collocation of words, or the signification of a doubtful phrase. In this belief, I am persuaded that the negotiators were only just to their respective Governments, and that, if the purpose of the article can be at once determined in harmony with the general tenor of its language, this discussion will be for ever terminated. It is to this inquiry, therefore, that I shall first address myself.

"The Oregon negotiation, which resulted in the treaty of 1846, originally involved, as you are aware, the whole of that territory west of the Rocky Mountains, between the parallels of 42° and 54° 40′ north latitude, which is now occupied south of the British line by the State of Oregon and the Territory of Washington. When President Polk came into office, in 1845, he found this whole region still in the joint occupation of the United States and Great Britain, under the treaty of 1827. Repeated efforts had been made to accomplish an amicable division of the territory between the two countries upon the basis of the parallel of 49°, and a proposition for the compromise was actually pending in Washington when Mr. Polk became President. Under these circumstances he felt himself bound to continue the negotiation, although in his inaugural address he had declared his full conviction that we had a clear title to the whole territory. He repeated the offer, therefore, which Great Britain had previously declined, to adopt the parallel of 49° as the boundary between the United States and

that Government, and he offered in addition to make free to Great Britain any port or ports on Vancouver's Island, south of that parallel, which the British Government might desire. In his note of July 12, 1845, announcing to Mr. McLane, who was then the American Minister, that this offer had been made, Mr. Buchanan, the Secretary of State, took care to explain that it was only made by the President in deference to the repeated action of his predecessors, and that, with a single exception, it was to be regarded as the ultimatum of this Government. 'From what has been said,' he writes, 'you will perceive how perfectly impossible it is for the President to accept any terms of compromise which would bring the British south of the parallel of 49°, and this you may intimate to the British Ministers in conversation, should you deem it wise under the circumstances. The only exception to this rule which could possibly be made might be the concession for an adequate equivalent of the small cape of Vancouver's Island south of this latitude.' The offer, however, was rejected by the British Minister in Washington, and was immediately withdrawn, Great Britain being informed at the same time that it would not be renewed, and that no further proposition would be made by the United States. It remained for the British Government, therefore, to determine what other steps, if any, should be taken to continue the negotiation. The first proposal which was then made was a proposal for arbitration, and this was declined by the President, for the avowed reason, among others, that its acceptance might possibly result in bringing the British possessions below the parallel of 49°. Meanwhile a resolution was passed by the Senate, advising the President to give the necessary notice to terminate the treaty of 1827 —which provided for the joint occupancy of Oregon—and this notice was given.

"In this serious condition of affairs renewed efforts were made through Mr. McLane, in London, to induce the President to repeat his offer of July 12, which had been rejected by Mr. Pakenham, without any reference of it to his Government, but the President refused to change his position. In

reference, however, to that or any similar offer which might be made by Great Britain, he made no secret of the course which he might be expected to pursue. 'He could not now authorise,' Mr. Buchanan wrote to Mr. McLane, on the 29th January, 1846, 'the conclusion of a treaty on that basis. But the Senate, his constitutional advisers, are now in session. The question of peace or war may be involved in the issue. . . . . In deference to the Senate, under these circumstances, he would in the first instance feel it to be his duty to submit such a proposition for their previous advice. . . . The President will accept nothing less than the whole territory, unless the Senate should otherwise determine. The only question which he will decide is, whether the new proposition, should any such be made, be of a character to justify its submission to the Senate for their previous advice.' With these views before him, and which were communicated to Her Majesty's Government, Mr. McLane was authorised to receive and transmit to his Government any proposition which Lord Aberdeen might make to him for that purpose; but the negotiation was in no event to be transferred to London. On the 15th of May the proposition seems to have been determined on by Great Britain, and Mr. McLane was then for the first time informed of it. 'I had a lengthened conference with Lord Aberdeen,' he wrote to Mr. Buchanan on the 18th of May, 'on which occasion the resumption of the negotiation for the amicable settlement of the Oregon question, and the nature of the proposition he contemplated submitting for that purpose, formed the subject of a full and free conversation. I have now to state that instructions will be transmitted to Mr. Pakenham by the steamer of to-morrow, to submit a new and further proposition on the part of this Government, for the partition of the territory in dispute. The proposition most probably will offer substantially, first, to divide the territory by the extension of the parallel of 49° to the sea—that is to say, to the arm of the sea called Birch's Bay—thence by the Canal de Haro and Straits of Fuca, to the ocean, and confirming to the United States (what indeed they would

possess without any special confirmation) the right freely to use and navigate the strait throughout its extent.' After further describing the proposal, Mr. McLane adds, that he has reason to know that it is not an *ultimatum*, but that Mr. Pakenham would have no authority to modify it without consulting his Government, and he expressed also the confident opinion that it will not be possible to obtain the extension of the forty-ninth parallel to the sea, so as to give the southern cape of Vancouver's Island to the United States.

"In conformity with the expectation of Mr. McLane, the British proposal was sent to Mr. Pakenham by the steamer of May 19, and on the 6th of June it was presented by Mr. Pakenham to Mr. Buchanan.. The proposal thus made was precisely the present treaty of 1846. On the 10th of June it was laid before the Senate by the President, with a request for their advice as to the action which, in their judgment, it may be proper to take in reference to it. On the 12th of June the Senate adopted a resolution advising the President 'to accept the proposal of the British Government.' Four days after the treaty was sent to the Senate for its approval, and on the 18th of June it was ratified in the precise form in which it came from the British Government.

"From this narrative, whatever may be said of the language which the negotiators of the Oregon treaty employed, to give effect to their intentions, there can be no doubt, it seems to me, as to the boundary which they had in view. The great controversy was ended on the forty-ninth parallel of north latitude. It is at this parallel that the boundary begins in the first article. It is this boundary which controls the British right of navigation, 'on the great branch of the Columbia River,' in the second article. It is this parallel which is referred to also in the third article in connection with the possessory rights of the Hudson's Bay Company. It is this parallel, moreover, which has been the basis of every Oregon negotiation which has ever been undertaken by either country. It was adopted at last in 1846, and now remains, with a single exception, the undisputed north-western boundary of the

United States. Had Vancouver's Island never existed, this exception would have been neither proposed nor conceded; but the boundary of forty-nine would have run directly to the ocean. Great Britain urged, however, that a divided jurisdiction on this island might be a source of constant difficulty to both countries; and since by far the larger part of it was north of the line, she insisted that the line should be deflected far enough to the south to leave the whole of it in her possession. Even this claim was strenuously resisted, and the United States endeavoured for a long time to avoid it by offering to concede the freedom of the harbours in the southern part of the island, instead of conceding the territory itself. Great Britain, however, refused to yield, and the deflection was finally adopted. It was adopted for the single purpose of leaving Vancouver's Island undivided. This was all that the British Government claimed, and this was all that the American Government conceded. Mr. Buchanan had written to Mr. McLane, that, except for this purpose, the President would never consent to bring the British boundary a single inch below the parallel of 49°, and no other purpose than this was anywhere avowed. If the British Government had desired still other territory south of 49°, it is quite incredible that this desire should never have been announced. The geography of that region was less perfectly known at that time than it now is, but on all the maps the Canal de Haro, and the archipelago east of it, were laid down with sufficient accuracy. No claim was made, however, to the possession of these islands, and the very island of San Juan, which is now so highly estimated by the British Government, was suffered to pass unnoticed. There can be no reasonable doubt, therefore, that in the language employed by Senator Benton, in his speech in support of the treaty, 'the line established by that article [the 1st] . . . . follows the parallel of 49° to the sea, with a slight deflection to avoid cutting the south end of Vancouver's Island.' This being established, it remains now to inquire in what manner the intention of those who negotiated the treaty was carried into effect.

"With respect to that part of the line of boundary which, in the words of the treaty, 'shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island,' there appears to be no dispute, and there is no conflict either as to that part of it which leads through the Straits of Fuca to the ocean. The only portion of it which is called in question is that which leads from the point of deflection on the forty-ninth parallel to Fuca Straits, and even here I am unable, I confess, to appreciate the difficulties by which Her Majesty's Government seems to be embarrassed. The words of the treaty are, 'Through the middle of said channel and of Fuca's Straits to the Pacific Ocean.' Ordinarily, and in the absence of any other controlling circumstances, the way which would be selected from one given point to another would be the shortest and the best way. In the present case this is the Canal de Haro, which is, undoubtedly, the broadest, the deepest, and the shortest route by which the Straits of Fuca can be reached from the point of deflection. This pre-eminence was given to it by De Mofras as long ago as 1841, and it has been fully confirmed by subsequent surveys. The Canal de Haro may, therefore, be fairly regarded, from its own intrinsic merits merely, as the main channel down the middle of which the treaty boundary is to pass to the Straits of Fuca. It is the only channel, moreover, which is consistent with the purpose of those who negotiated the treaty, for it is the only channel which separates Vancouver's Island from the continent without leaving something more to Great Britain south of the forty-ninth parallel than the southern cape of that island. The Rosario Channel, claimed by Captain Prevost, would surrender to Great Britain, not only Vancouver's Island, but the whole archipelago between that island and itself; while the middle channel, which is proposed as a compromise by Lord John Russell, would in like manner concede the important island of San Juan. These considerations seem to be almost conclusive in favour of the Haro Channel. But they are abundantly confirmed by evidence contemporaneous with

the negotiation of the treaty. The description given by Mr. McLane, immediately after he had an interview on the subject with Lord Aberdeen, of what the British proposal would be, has already been mentioned, and carries the line in so many words down the Canal de Haro. Equally clear is the statement of Senator Benton as to what the proposition was. Colonel Benton was one of the most earnest members of the Senate in his support of the treaty, and he was better acquainted, perhaps, than any other member with the geography of the region in dispute. His construction, therefore, of the treaty, at the very time it was before the Senate for ratification, is entitled to no inconsiderable weight. On that occasion he said: 'The first article is in the very words which I myself would have used, ... and that article constitutes the treaty. With me it is the treaty. . . . . The great question was that of boundary. . . . . When the line reaches the channel which separates Vancouver's Island from the continent . . . . it proceeds to the middle of the channel, and thence turning south through the Channel de Haro (wrongly written *Arro* in the maps) to the Straits of Fuca.' Mr. Buchanan, who signed the treaty, was equally explicit in his understanding of this part of it. In a letter to Mr. McLane, dated the 6th of June, 1846 (the very day on which the treaty was presented by Mr. Pakenham to Mr. Buchanan), a copy of which is now before me, he expressly mentions the Canal de Haro as the channel intended by the treaty; and subsequently, on the 28th of December, 1846, Mr. Bancroft having written to him on the subject from London, he enclosed to him a traced copy of Wilkes's chart of the Straits of Arro, and added in his letter: 'It is not probable, however, that any claim of this character will be seriously preferred by Her Britannic Majesty's Government to any island lying to the eastward of the Canal de Arro, as marked in Captain Wilkes's map of the Oregon Territory.' Mr. Bancroft, who was a member of President Polk's Cabinet when the treaty was concluded, wrote repeatedly to Lord Palmerston after receiving this chart, and

uniformly described the Straits of Arro 'as the channel through the middle of which the boundary is to be continued.' He seems at one period to have been informed that the Hudson's Bay Company were inclined to encroach upon the islands east of the Haro Channel, and to claim them under the treaty, but he did not rely fully upon this information, and 'the Ministry,' he said, 'has, I believe, no such design. Some of its members would be the first to frown on it.' The Canal de Haro, then, as being the best channel leading from the point of deflection to the Straits of Fuca; as answering completely the purpose for which the deflection was made; as being the only channel between the island and the mainland which does answer this purpose, and as being supported, also, by a large amount of personal testimony contemporaneous with the treaty, must fairly be regarded, in my judgment, as the treaty channel. Nor are there any important difficulties which seem to me to be necessarily in conflict with this conclusion. Lord John Russell, indeed, says that it is beyond dispute that the intentions of the British Government were that the line of boundary should be drawn through Vancouver's Channel. But this assumption is wholly inconsistent, not only with the treaty itself, but with the statements both of the Earl of Aberdeen and of Sir Richard Pakenham. Lord Aberdeen declares that it was the intention of the treaty to adopt the *mid channel of the straits* as the line of demarcation, without reference to islands, the position of which, and indeed the very existence of which, had hardly at that time been accurately ascertained; 'and he has no recollection of any mention having been made during the discussion of any other channel than those described in the treaty itself.' Sir Richard Pakenham is still more explicit. 'Neither the Canal de Haro nor the Channel of Vancouver,' he says, 'could, as I conceive, exactly fulfil the conditions of the treaty which, according to their literal tenor, would require the line to be traced along the middle of the channel, meaning, I presume, the whole intervening space which separates the continent from Vancouver's Island.' He adds further, that he

has no recollection whatever that any other channel was designated in the discussions than that described in the language of the treaty. Surely there is nothing in this testimony which supports the statement of Lord John Russell, that the Channel of Vancouver was the channel intended by the treaty; but, on the contrary, another and entirely different channel is suggested as that which the convention requires. After these statements of Lord Aberdeen and Sir Richard Pakenham, the Rosario Channel can no longer, it seems to me, be placed in competition with the Canal de Haro. Whether the latter is the true channel or not in the opinion of the British negotiation, it is quite certain, by the concurrent testimony of both the American and British negotiators, that the former channel is not. In respect, moreover, to the Canal de Haro, the other considerations to which I have referred appear to me to quite outweigh the mere want of recollection of Lord Aberdeen and Sir Richard Pakenham, or their general impression at this time as to what is required by the literal language of the treaty. In this connection there is one allusion in Sir Richard Pakenham's memorandum to which I think it right to call your special attention. It is the reference which he makes to his final instructions from Lord Aberdeen, dated May 18th, 1846, and describing the boundary line which he was authorised to propose to Mr. Buchanan. These instructions were shown by Lord Napier to Mr. Campbell, and, according to his clear recollection, the description quoted by Sir Richard Pakenham was followed in the despatch by these words: 'Thus giving to Great Britain the whole of Vancouver's Island and its harbours.' This places beyond controversy the object which was intended by deflecting the treaty boundary south of the parallel of 49°, and ought to have great weight, undoubtedly, in determining the true channel from the point of deflection to the Straits of Fuca.

"During the discussion of the subject by the Joint Commissioners, some critical objections, I am aware, were made by Captain Prevost to the adoption of the Canal de Haro as the treaty channel; but these were so fully answered by Mr.

Campbell, whose whole argument, indeed, is marked both by ability and research, that I do not think it necessary now to review them. One of them, which distinguished between the separation of the continent from the island and that of the island from the continent, has been set at rest by the testimony of the British negotiators, in favour of a middle channel of the straits, and in exclusion of the channel nearest to the continent. Even were this otherwise, I confess my inability to attach importance to the distinction upon which Captain Prevost thought it his duty to dwell at some length. Where a separation of two objects from each other is to be described, it seems to me quite immaterial which of them is placed first in the words of the description.

"Another of these objections, which were discussed by the Commissioners, has been thought worthy of a place in the despatch of Lord John Russell. 'If the boundary line,' his lordship contends, 'had been intended to pass through the Haro Channel, the treaty must have been otherwise worded. The Haro Channel could not have been regarded or described as a portion of the channel commencing with the Gulf of Georgia, for it is neither the channel discovered by Vancouver, nor is it in regard to its general configuration a continuation in a southerly direction of the Gulf of Georgia.' It is a sufficient answer to this objection that there is nothing said in the treaty either of the Gulf of Georgia or of the Straits of Vancouver, and that the objection, therefore, assumes the whole question in dispute. Undoubtedly there were many inaccuracies upon the maps of that region which existed in 1846, but since the very map of Vancouver—which his lordship claims was the only map then before the British negotiators—described the whole space between Vancouver's Island and the continent as a part of the entire body of water which he calls the Gulf of Georgia, I do not see why the Canal de Haro is not just as much a continuation of that gulf as the Straits of Rosario; and if either of the channels in this space is to be excluded from a participation in the gulf, it would be quite extraordinary that the broadest and best of

them should be the one selected for this exclusion. Equally extraordinary is it that the Canal de Haro should be regarded as not running in a southerly direction to the Straits of Fuca, because it sometimes inclines to the west, while no such objection is thought to apply to the Channel of Rosario, although this channel inclines for a long distance to the east, and cannot properly be said to flow into the Straits of Fuca at all. The truth is that the word 'southerly' was used in no such restricted sense as that contemplated by this objection, but only to designate the general direction from the point of deflection on the line of forty-nine to the ocean. The language is, 'Through the middle of said channel and of Fuca's Straits to the ocean.' That the term 'southerly,' moreover, was not deemed inapplicable to the Canal de Haro by those who assisted in giving effect to the treaty, is quite evident from the language already quoted from Colonel Benton, who describes the treaty line as 'turning *south*, through the Channel de Haro, to the Straits of Fuca.'

"'This channel, however,' it is said by his lordship, 'was not at that time known (at all events, by Her Majesty's Government) to be navigable for shipping, but, on the contrary, it was supposed to be a dangerous, if not an unnavigable strait.' At this statement of his lordship I can only express my great surprise, because this channel had been discovered as early as 1798, was distinctly marked on every considerable chart of that region which existed in 1846, had been formally examined by Captain Wilkes in his Exploring Expedition, and had been particularly described by De Mofras as the easiest channel between Vancouver's Island and the continent. I am at a loss to understand, moreover, for what purpose this erroneous opinion, which is said to have been entertained by Her Majesty's Government, is mentioned by his lordship. If it is intended to be claimed that the Canal de Haro was set aside by the British negotiators as the treaty line, because they believed it to be unnavigable and dangerous, it is only necessary to oppose to this claim the testimony of the negotiators themselves, both of whom declare that neither of the channels

between Vancouver's Island and the continent was, within their recollection, the subject of consideration in 1846, and both of whom seem to have no other resort for the meaning of the treaty but the language of the treaty itself. Whatever may have been the view entertained of it, however, by the British Government, it is quite certain now that it is, on the whole, the best channel within the space in question, while from the point of deflection on the forty-ninth parallel to the Straits of Fuca it is, by very far, also the shortest passage. Even, therefore, if it were to be conceded that the channel of the treaty is an impossible one, the Canal de Haro would seem to be pointed out by its position and character as the best line of agreement which could possibly be selected. The Douglas Channel, which is suggested by Lord John Russell, is admitted (on the contrary) to be an inferior channel, scarcely capable of navigation, except for steamers, and is chiefly recommended for adoption because it would leave the island of San Juan to Great Britain. In this point of view it is urged with much earnestness by his lordship, upon a consideration of what is alleged to be the great importance of the island to Great Britain, and its comparative worthlessness to the United States. This consideration seems to be pressed, moreover, with the greater confidence because his lordship seems to think that it was under the influence of a similar argument that Great Britain yielded to this Government, both in 1842 and 1846, the larger portion of the territory which on each of those occasions was in dispute between the two countries. There may be occasions, doubtless, where this argument of mutual convenience would be entitled to much weight, and on every such occasion there is no Government which would be more likely to do justice to it than the Government of the United States. I know of nothing, however, in the present case which brings it properly within this rule. His lordship, indeed, says that much importance is attached to the retention of the island by the British colonial authorities, and by Her Majesty's Government, but no reason is given for this by his lordship, and I am quite unable to understand by what process it is that he has reached the con-

clusion that the island is only valuable to Great Britain. Its limited agricultural resources and its harbours might certainly be of equal interest to either country, and since both Governments hold important possessions in its neighbourhood, its value in a military point of view cannot fairly be overlooked by either of them.

"This whole argument from mutual convenience, however, can only be entitled to weight where there is no possible mode of agreeing upon title, and since the President entertains a strong conviction that the American title to the island of San Juan can be clearly maintained under the treaty of 1846, it is unnecessary to pursue the discussion upon this point.

"But if this were otherwise, and the argument of relative importance was fairly within the case, it could possibly derive no aid from the considerations which have been presented in connection with the treaties of 1842 and 1846. Under the latter treaty, as you are aware, a large tract of territory was surrendered to Great Britain, for the sake of preserving friendly relations between the two countries, which, in the deliberate judgment of this Government, was a rightful possession of the United States, and this marked exhibition of its regard for peace and conciliatory spirit towards Great Britain cannot be justly employed now as a precedent for another cession in the same region. A similar exhibition was made by the United States in the treaty of 1842, and this example has been rendered peculiarly marked, because at this time there can be no doubt whatever that the whole claim of the United States, on that occasion, was just and valid. Within a year after the treaty of Washington was concluded, it was stated in Parliament by Sir Robert Peel, and the disclosure was then for the first time made, that there was in the library of King George III. (which had been given to the British Museum) a copy of Mitchell's map, in which the boundary as delineated 'follows exactly the line claimed by the United States.' Mr. Everett, who was then our Minister in London, took the earliest opportunity to examine it, and in a statement recently published on the subject he says:—

"'On four places upon that line are written the words, in a strong, bold hand, "The boundary as described by Mr. Oswald." There is documentary proof that Mr. Oswald sent the map used by him in negotiating the treaty to King George III. for his information, and Lord Brougham stated in his place in the House of Peers that the words four times repeated in different parts of the line were, in his opinion, written by the King himself. The boundary is marked in the most distinct and skilful manner, from the St. Croix all round to the St. Mary's, and is precisely that which has always been claimed by us. There is every reason to believe that this is the identical copy of Mitchell's map officially used by the negotiators, and sent by Mr. Oswald, as we learn from Dr. Franklin, to England. Sir Robert Peel informed me that it was unknown to him until after the treaty, and Lord Aberdeen and Lord Ashburton gave me the same assurance. It was well known, however, to the agent employed under Lord Melbourne's administration, in maintaining the British claim, and who was foremost in vilifying Mr. Webster for concealing the red line map.'

"It is quite obvious from the facts in this statement, which you are aware were made the subject of comment in the American Senate at the time of their development, that the whole concession of territory which was made by the treaty of Washington was made by the United States.

"The argument to be drawn from both the cases thus cited by Lord John Russell is a conclusive demonstration of that good-will and friendly disposition which have always characterised the intercourse of this Government with that of Great Britain, and which, I trust, upon all proper occasions, will still continue to exert their influence. I have thus presented, for the first time since the report of the Commissioners was made to their respective Governments, the views of the President with respect to it. I have done this with great frankness, but in a spirit, I trust, of candour and moderation, and with an earnest desire, I am sure, for an early and satisfactory adjustment of the question at issue. If I have not dwelt at length upon the particular proposal made by Lord John Russell, this has only

been because the President, in view of his own strong convictions on the subject, still entertains the hope that the treaty itself may be found sufficient for the parties to it, and that there may be no necessity, therefore, for seeking a line outside of it. You will present these views to Her Majesty's Government in that same conciliatory spirit which in the despatch of Lord John Russell is urged upon Lord Lyons, and you will enforce them with such appropriate arguments as may occur to you, and you may find it suitable and convenient to present.

"You will also read this despatch to Lord John Russell, and leave with him a copy of it.

"I am, sir, your obedient servant, "LEWIS CASS.

"George M. Dallas, Esq., &c. &c. &c."

This despatch was shown to Lord Russell by Mr. Dallas, and the former replied by a letter to Lord Lyons :(1)—

"Foreign Office, November 29, 1859.

"MY LORD,—I have received from Mr. Dallas a note from General Cass to him, dated the 20th ultimo, on the subject of the disputed territory of San Juan.

"That despatch has been the subject of serious consideration by Her Majesty's Government, and I hope, in the course of a week or ten days, to be able to send you an answer to it.

"In the meantime I wish you to remove, if possible, an unfavourable impression from the President's mind with respect to a declaration contained in my despatch of the 24th of August.

"That declaration, which was to the effect 'that no settlement of the question will be accepted by Her Majesty's Government which does not provide for the island of San Juan being reserved to the British Crown,' appears to have given rise to some misconception.

"When the meaning of a treaty is, in the opinion of one

(1) American State Papers, p. 241.

of the parties, clearly in favour of the interpretation it has adopted, but the interests at stake are unimportant, the point in dispute may be willingly yielded for the sake of peace and good neighbourhood. But when the meaning is in the opinion of one of the parties clearly in their favour, and the interests at stake are at the same time highly important, a concession which would involve both an evident right and a valuable interest, can hardly be expected.

"Such was the sense in which I wrote that we could not accept a settlement which would deprive the British Crown of the island of San Juan. The right to the sovereignty of that island is, in the opinion of Her Majesty's Government, evident on the face of the treaty; the importance of that island to the security of Her Majesty's possessions in Vancouver's Island and British Columbia is as well known to the citizens of the United States as to the Queen's subjects in North America.

"You will assure General Cass that if, in the opinion of Her Majesty's Government, the United States could rightfully claim the island of San Juan, Her Majesty would be advised to surrender it, however great, in our eyes, the importance of the position which might thus be yielded.

"Or if the importance of the island, in our eyes, were trifling, although our right was, in our opinion, perfectly clear, we should be disposed to consider the matter with a view to remove every source of difference with the United States in which great interests were not involved.

"Further than this Her Majesty's Government can hardly be expected to go. It is in this spirit that I shall address you, as I have already intimated, upon the whole subject in dispute, and I hope to do so very shortly.

"I am, &c. &c., "J. Russell.

"P.S.—You will read this despatch to General Cass, and will leave with him a copy of it.

"J. R.

"Lord Lyons, &c. &c."

This letter was followed by a long despatch from

Lord Russell to Lord Lyons, in which he reviewed at length the whole subject, in reply to the despatch of Mr. Cass :(1)—

"Foreign Office, December 16, 1859.

"My Lord,—Mr. Dallas communicated to me on the 12th ultimo the despatch from General Cass, of which I enclose a copy, in reply to the communication which, by my despatch No. 42, of the 24th of August, you were directed to make to the Government of the United States, on the subject of the water boundary between Her Majesty's possessions and those of the United States, under the treaty of 1846.

"Although Her Majesty's Government cannot concur in the conclusions at which General Cass has arrived, they receive with satisfaction the assurance that the Government of the United States reciprocate their desire that this question may be discussed between the two Governments in a friendly spirit.

"My instruction of the 24th of August, as your lordship is aware, was sent off from this country many days before the intelligence of General Harney's proceedings had reached Her Majesty's Government; the proposal, therefore, which it contained was not made, as General Cass seems to think, in view of the seizure of San Juan by United States troops. So far was this from being the case that I cannot help saying that if that instruction had not been already on its way to Washington when the news of General Harney's aggression became known in this country, it would have been impossible for Her Majesty's Government to have acted upon their intention to propose a friendly compromise of the question in dispute, until they had learned that General Harney's proceedings had not been approved, and that matters had been restored to their former footing.

"My despatch, however, was already, or shortly afterwards, in your lordship's hands, and, under the circumstances, you acted judiciously in at once communicating its contents to the

(1) American State Papers, p. 242.

United States Government. On the other hand, the explanations which that Government has since given, and the instructions furnished to General Scott, have relieved Her Majesty's Government from all further difficulty as to pursuing this negotiation.

"I have already, in my despatch No. 114, of the 29th ultimo, instructed you to explain to the United States Government the sense in which I had stated 'that no settlement of the question will be accepted by Her Majesty's Government which does not provide for the island of San Juan being reserved to the British Crown.'

"Your lordship is aware that the question in dispute was not restricted to the island of San Juan only. The Commissioners, indeed, seem to have been agreed as to the general direction which the boundary line, running westwards from the continent, should follow on reaching the centre of the Gulf of Georgia; but as to the particular course which it should take in order to arrive at the Straits of Fuca, the divergence of opinion was extreme. Captain Prevost considered that the line should be continued down the Rosario Strait. Mr. Campbell held that it should be run through the Haro Channel. The contest was not, therefore, a contest for the island of San Juan only, but it also embraced the important islands of Lopez and Orcas, and the cluster of smaller islands in their immediate neighbourhood. In short, the area in dispute was the whole archipelago lying between Rosario Strait and the Haro Channel.

"In pointing out, therefore, to your lordship that in whatever manner the question was ultimately settled, Her Majesty's Government could not yield the island of San Juan, Her Majesty's Government were, by implication, abandoning a large part of the territory they had claimed, and were merely insisting on the retention of an island, which, from the peculiarity of its situation, it was impossible for Her Majesty's Government to cede without compromising interests of the gravest importance.

"The Government of the United States further takes

exception to the tenor of the instructions given to the British Commissioner, as limiting the free exercise of his judgment in regard to the island of San Juan.

"Her Majesty's Government cannot admit that a Government is precluded from laying down rules for the guidance of its Commissioner, or from restricting his discretionary power, within certain bounds; but the fact is, that, by the instructions with which Captain Prevost was furnished, he was authorised, in case he should be of opinion that the claims of Her Majesty's Government to consider the Rosario Strait as the channel of the treaty could not be sustained, to adopt any other intermediate channel on which he and the United States Commissioner might agree.

"The Government of the United States animadverts on the contingency of a disagreement between the Commissioners having been contemplated by those instructions, and alludes to Captain Prevost having been authorised to propose the very compromise which you were instructed, by my despatch No. 42, of the 24th of August, to offer.

"But it surely is not unreasonable in entering into a negotiation to contemplate the possibility of failure, and to provide for such a contingency by directing, in that case, a compromise to be proposed; and it appears to Her Majesty's Government that no other inference can fairly be drawn from this circumstance, than that the British Government were always ready, with a view to a good understanding with that of the United States, to waive their extreme claim, and to agree to divide between the two states the islands over which they severally claimed exclusive sovereignty.

"I now pass to a consideration of the main portion of General Cass's note. There are three points of importance which the Secretary of State relies upon in support of the United States claim:—

"1. That the forty-ninth parallel of north latitude was fixed by common consent as the boundary between the respective possessions of the two countries in that region.

"2. That the Haro Channel was the channel which the negotiators of the treaty of 1846 had in view; and

"3. That the channel described in the treaty answers to that channel.

"With respect to the first point, the Secretary of State argues on the assumption that the title of the United States to the whole of the territory included between the parallel 42° and 54° 40′ north latitude had been clear and unquestionable, and he would consequently leave it to be inferred that Great Britain holds her present possessions in that quarter, not in virtue of any right or claim which she may have previously possessed, but solely through the concessions made to her by the United States in the treaty of 1846.

"Undoubtedly, the title by which Great Britain now holds British Columbia and Vancouver's Island is the same as that by which the United States possess the Oregon State and Washington Territory—viz., the treaty of 1846; but when General Cass asserts that previously to that treaty the title of the United States to the whole of the territory between the parallels of 42° and 54° 40′ had been clear and unquestionable, Her Majesty's Government can only reply that, in their opinion, it was the title of Great Britain to that territory which was clear and indisputable.

"It would serve no good purpose, however, to reopen a question which was settled by the treaty of 1846, and I shall, therefore, only observe that the principle that both countries had claims to the disputed territory was recognised by the Convention of 1818 and 1827, and by the joint occupancy established on the failure of the attempts to effect an equitable partition of that territory.

"General Cass goes on to say that when Mr. Polk became President, in 1845, the United States Government repeated the offer which the British Government had previously rejected, of the parallel of 49° as the boundary, and that it further offered to make free to Great Britain any port or ports in Vancouver's Island, south of that parallel, which the British Government might desire. General Cass says, truly, that the

British Envoy immediately rejected that offer. The words employed by Mr. Pakenham were, 'that he trusted the American Plenipotentiary would be prepared to offer some further proposal for the settlement of the Oregon question more consistent with fairness and equity, and with the reasonable expectation of the British Government.'

"After dwelling upon the course taken by the United States Government with the view of maintaining its claim to the territory south of the forty-ninth parallel, General Cass reverts to Mr. McLane's report of what passed at the interview which he had with Lord Aberdeen on the 15th of May, 1846; and General Cass states that Mr. McLane wrote subsequently to his own Government that he thought the substantial 'offer' of the British Government would, 'probably,' be, 'to divide the territory by the extension of the parallel of 49° to the sea—that is to say, the arm of the sea called Birch's Bay—thence by the Canal de Arro and Straits of Fuca to the ocean.'

"General Cass goes on to say that Mr. Benton spoke of the Canal de Haro in the Senate as the channel which had been agreed upon; and that Mr. Buchanan, who signed the treaty, was equally explicit in his understanding of that part of it which relates to the water boundary. And he further refers to the despatch of Lord Aberdeen which accompanied the final draught of the treaty, 'as placing beyond controversy the object which was intended by deflecting the treaty boundary south of the parallel of 49°.'

"As General Cass has alluded to Lord Aberdeen's despatch, I shall proceed to quote, not an isolated expression such as that which Mr. Campbell was able to repeat from his recollection of what was told him by Lord Napier,(1) but a full extract of that portion of Lord Aberdeen's despatch which deals with the question of the forty-ninth parallel:—

"'The boundary [said Lord Aberdeen] having been fixed by the Convention of 1818, between the possessions of Great Britain and the United States, and the line of demarcation having been carried along the forty-ninth parallel of latitude,

(1) *Ante*, p. 170.

for a distance of 800 or 1,000 miles, through an unfrequented and unknown country, from the Lake of the Woods to the Rocky Mountains, it appeared to the Government of the United States that it was a natural and reasonable suggestion that this line should be continued along the same parallel for about half this distance, and through a country as little known or frequented, from the Rocky Mountains to the sea. And, indeed, with reference to such a country, the extension of any line of boundary already fixed might equally have been suggested, whether it had been carried along the forty-ninth or any other parallel of latitude.

"'On the other hand, however, it may justly be observed that any division of territory in which both parties possess equal rights ought to proceed on a principle of mutual convenience, rather than on the adherence to an imaginary geographical line; and, in this respect, it must be confessed that the boundary thus proposed would be manifestly defective. It would exclude us from every commodious and accessible harbour on the coast; it would deprive us of our long established means of water communication with the interior for the prosecution of our trade; and it would interfere with the possessions of British colonists resident in a district in which it is believed that scarcely an American citizen, as a settler, has ever set his foot.

"'You will accordingly propose to the American Secretary of State that the line of demarcation should be continued along from the forty-ninth parallel, from the Rocky Mountains to the sea-coast, and from thence, in a southerly direction, through the centre of King George's Sound, and the Straits Juan de Fuca, to the Pacific Ocean, leaving the whole of Vancouver's Island, with its ports and harbours, in the possession of Great Britain.'

"In a separate despatch, of the same date, Lord Aberdeen enclosed to Mr. Pakenham a draught of the treaty of 1846, which was accepted, as is stated by General Cass, by the United States Government, without alteration.

"General Cass will perceive from the extract which I have quoted above from Lord Aberdeen's despatch, that Lord

Aberdeen specified King George's Sound as the channel down which the treaty boundary was to run. What Lord Aberdeen meant by King George's Sound may be clearly inferred from an extract which I shall quote from a letter addressed to him at that time by Sir John Pelly, the then Governor of the Hudson's Bay Company, giving a summary of a conversation which he had held with Lord Aberdeen on the 16th of May—namely, two days before the date of Lord Aberdeen's despatch to Mr. Pakenham :—

"'I have been considering the subject on which I had the honour of conversing with your lordship on Saturday last, and feeling that, in the multiplicity of business which comes before your lordship some parts may have been overlooked, or that I may not have been sufficiently explicit, I have thought it advisable to trouble you with a few lines.

"'In the first place, I assume that the forty-ninth degree of latitude, from its present terminus, will be continued across the continent to the waters known as the Gulf of Georgia, and be the line of demarcation of the continent between Great Britain and the United States.

"'The next question on which the Governments of the two countries will have to decide will be as to the islands abutting on and in the Gulf of Georgia—viz., one, Vancouver Island, intersected by the parallel of 49°, and others which are wholly on the south of that parallel. With respect to the former, I think, upon the principle of mutual convenience (and which I think should form the foundation of the treaty), Great Britain is entitled to the harbour on its south-east end, being the *only* good one, those in Puget Sound being given up to the United States; that with respect to the other islands, the water demarcation line should be from the centre of the water in the Gulf of Georgia in the forty-ninth degree along the line coloured red, as navigable in the chart made by Vancouver, till it reaches a line drawn through the centre of the Straits of Juan de Fuca. The only objection to this is giving to the United States the valuable island of Whidbey; but I do not see how this can be avoided in an amicable adjustment.'

"No inference can be fairly drawn from Lord Aberdeen's silence on the subject of the islands of the archipelago than that allusion was made only to the broad geographical features, the mention of which was suffered to be sufficient for the matter under discussion.

"It is to be observed, moreover, that Lord Aberdeen was fully alive to the importance of securing access to the British possessions, and that he declined accordingly to accept a boundary 'which would exclude us from every commodious and accessible harbour on the coast, and which would deprive us of our long established means of water communication with the interior,' stipulations which the British Government felt that it was entitled to insist upon, in consideration of the vast extent of territory, including the valley of the Columbia, and a valuable sea-coast, which it was prepared to surrender to the United States, in order to arrive at an amicable adjustment of the question in dispute between the two countries.

"Having, I trust, sufficiently shown the intentions of the British Government as regards the water boundary when they made the proposal which was adopted in the treaty, I shall advert to Mr. Crampton's report of what passed between him and Mr. Buchanan, in January, 1848, as showing, first, that the Government of the United States has long been aware that its claim to the Haro Channel as the boundary of the treaty was not admitted by Her Majesty's Government; and, secondly, that the Secretary of State of the United States, who signed the treaty of 1846, did not at that time contend that the treaty gave to Great Britain anything more than Vancouver's Island.

"Mr. Crampton on that occasion had stated to Mr. Buchanan the reason which induced the British Government to maintain that the Rosario Strait was the channel spoken of in the treaty, and he accordingly suggested that the instructions to the Commissioners to be appointed for marking out the boundary, should be drawn up on the assumption that the line was to be run down that strait.

"Mr. Crampton reported that Mr. Buchanan, 'speaking of the word "channel" as employed in the convention of 1846,

observed that he himself, and he presumed Mr. Pakenham, in negotiating and signing that convention, had always conceived "channel" to mean the main navigable channel wherever situated.'

"After some further remarks, Mr. Buchanan suggested that the point should be left for decision by the Commissioners.

"If Mr. Buchanan was of opinion that the channel spoken of in the treaty was the 'main navigable channel' *wherever situated*, and if that question was to be decided by Commissioners, how can it be contended that the United States Government understood the treaty as giving to Great Britain nothing beyond Vancouver's Island? But General Cass, in his anxiety to prove that the Rosario Strait is not the channel of the treaty, asserts that it cannot properly be said to flow into the Straits of Fuca at all.

"I must confess myself unable to comprehend what General Cass means by that assertion. Surely he cannot desire to confine the appellation of 'Straits of Fuca' to the mere point at which those straits communicate with the Pacific. I can hardly imagine that such a proposition can have been seriously entertained by General Cass, and the less so, because General Cass cannot be ignorant that the appellation of Strait of Fuca has, by one writer at least, and that one an American writer, namely, Greenhow, been applied to the whole of the water space separating Vancouver's Island from the continent, between the forty-eighth and fiftieth parallels of latitude.

"General Cass expresses surprise because I said in my former despatch that the British Government in 1846 believed the Haro Canal to be a dangerous passage, and he adds that that channel had been examined by Captain Wilkes while on his exploring expedition. Now Her Majesty's Government never intended to assert that the Haro Channel had on no occasion, before 1846, been visited by any mariner. What they meant to convey is, that before 1846 the Rosario Strait, and not the Canal de Haro, was the channel ordinarily used by shipping; and they continue to maintain that the channel now known as Rosario Strait had always been regarded as a

continuation of the broad space of water called at the present day the Gulf of Georgia, whereas the Canal de Haro was looked upon as an independent channel. The names 'Gulf of Georgia' and 'Canal de Rosario' are, indeed, regarded by some writers as synonymous terms. De Mofras, who has been quoted by General Cass as speaking of the Canal de Haro as 'le passage le plus facile,' adds later on, 'dans cette partie' (that is to say at the fiftieth parallel) 'le bras qui sépare le continent de l'île de Quadra et Vancouver acquiert une largeur de quatre à sept lieues. *Les Espagnols l'appelèrent Canal del Rosario; mais Vancouver eut soin de changer ce nom en celui de Golfe de Georgie.*'

"Again Greenhow, who cannot be suspected of any leaning towards the British claim, unconsciously gave strong testimony in favour of that claim. When speaking of the meeting of the British and Spanish exploring vessels in 1792, in the middle of the gulf, and of their having agreed to unite their labours, he says: 'During this time they surveyed the shores of the great gulf above mentioned, called by the Spanish "Canal del Rosario," and by the English *the Gulf of Georgia, which extended north-westward as far as the fiftieth degree of latitude.*'

"But General Cass observes that the Gulf of Georgia is not mentioned in the treaty. This is no doubt true; but Lord Aberdeen, in the despatch which accompanied the draught of treaty, instructed Mr. Pakenham to propose that the line should be run down the centre of the Gulf of Georgia, called by him 'King George's Sound;' and as I have already shown that the terms 'Gulf of Georgia,' and 'Canal de Rosario,' have been indifferently applied to one and the same channel, a clear indication is afforded by Lord Aberdeen's despatch of the direction which he intended that the boundary line should take.

"At all events we may appeal to Lord Aberdeen's despatch as giving a more satisfactory and complete key to the meaning of the term 'channel,' spoken of in the treaty, than the despatch of Mr. McLane, which refers to 'Birch's Bay,' and the 'Canal de Arro,' neither of which is mentioned in the treaty any more than the Gulf of Georgia.

"Mr. McLane's despatch shows what he thought Lord Aberdeen would probably instruct Mr. Pakenham to propose; Lord Aberdeen's despatch proves what he actually did instruct Mr. Pakenham to propose.

"General Cass refers, moreover, to Sir R. Pakenham's memorandum as evidence against the British claim; but your lordship will observe that Sir R. Pakenham's object in that paper was not so much to enter upon the question as to what were the intentions of the negotiators of the treaty, as to offer an opinion as to how far, with the information since acquired by the two Governments, the boundary line could, according to the literal words of the treaty, be carried down either the Canal de Haro, or the channel of Vancouver.

"Sir R. Pakenham seems to think that the conditions of the treaty wouldobtain their most exact fulfilment if the line were carried through the Douglas Channel. According to General Cass, Sir R. Pakenham adds that he has no recollection whatever that any other channel was designated in the discussion than that described in the language of the treaty.

"I must beg leave, however, to correct General Cass upon this point. What Sir R. Pakenham adds is, that the treaty was signed and ratified 'without any intimation to us whatever, on the part of the United States Government, as to the particular direction to be given *to the line* of boundary contemplated by article first of the treaty.'

"These observations suffice to show that the arguments which General Cass has drawn from the supposed intentions of the negotiators of the treaty, can be met by arguments of at least equal weight on our side; but, however we may be disposed to rely on the instructions of Lord Aberdeen and the letter of Sir John Pelly, and the United States on the statements of Mr. McLane and Mr. Benton, it must be confessed on both sides that the interpretation of one party, without the expressed assent of the other, goes but very little way to remove the difficulty.

"Had Lord Aberdeen and Sir John Pelly obtained the consent of the United States Government to their views in

favour of the channel marked as navigable by Vancouver, or had Mr. McLane and Mr. Senator Benton obtained the assent of Lord Aberdeen and Mr. Pakenham to their opinion that Haro's Strait was the channel intended by the treaty, such agreement would have been conclusive. But separate interpretations, not communicated to the other party to a treaty, cannot be taken as decisive in a disputed question.

"We are forced, therefore, to recur to the words of the treaty, and Her Majesty's Government are ready to disavow any intention of 'abandoning the treaty line for a line purely arbitrary.'

"'The treaty provides,' General Cass truly says, 'that the boundary line shall be continued along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island.' Let us stop here; we have here something fixed, namely, a point on the forty-ninth parallel of latitude, and half way between the continent and Vancouver's Island. The article proceeds, 'and thence southerly through the middle of said channel.' Here the meaning of the negotiators appears clear; the boundary line is to go 'through the middle of the said channel.'

"If the whole space between the continent and Vancouver's Island had been occupied by water, there can be no doubt that the words 'middle of the said channel' would have been interpreted to mean drawing the line along the middle of the channel. When you say along the middle of the road, you do not mean one side of the road. When you say along the middle of the street, you do not mean one side of the street.

"But it happens that the channel is not an uninterrupted space of water, but is intersected by various islands; hence the contested interpretation—one side contending for Haro's Channel, and the other for Vancouver's or the Rosario Channel.

"I need not refer further to the argument by which each nation has supported its views. But shall we not approach nearer to the spirit of the treaty, if, as Sir R. Pakenham

suggests, we draw a line equidistant from the continent and Vancouver's Island, and prolong it till we reach 'Fuca's Straits and the Pacific Ocean,' words which complete the description of the boundary?

"Or, again, if it would be inconvenient to both nations to have five or six islands partially divided between them, would it not be fair and expedient to look for a channel which shall be the nearest approximation to that line, midway between the continent and the island of Vancouver, which is designated by the treaty? And if Douglas's Channel fulfils this condition, is it not the line most in accordance with the treaty, as well as with general policy and convenience?

"In treaties by which a water or river boundary is established between two states—as, for instance, in the treaty between Great Britain and the United States of 1783—the dividing line is usually run along the mid-channel or 'Thalweg,' leaving to one state or the other any island which may be in the channel, according as these islands lie on the one side or on the other of the dividing boundary, but seldom if ever mentioning such islands. The same principle may be applied to the treaty of 1846. The treaty continues the dividing line of the forty-ninth parallel to a point in the water half way between the mainland and Vancouver's Island, and it says, in effect, that the boundary line shall be continued southward, along the middle of that channel—that is to say, along the middle of the space which lies between the continent and Vancouver's Island—till it reaches the Straits of Fuca.

"General Cass indeed observes, that the way selected should be 'the shortest and the best way;' that the Canal de Haro is 'the broadest, the deepest, and the shortest route' by which the Straits of Fuca can be reached from the point of deflection. But the treaty says nothing of the 'best' way, nor of the 'broadest,' nor of the 'deepest,' nor of the 'shortest' route. The reason is obvious. The object was not to enable vessels to reach the Pacific Ocean by the shortest route—that object is provided for by the other part of the article, which provides that the navigation of the whole of the

said channel and straits south of the forty-ninth parallel of north latitude shall remain free and open to both parties. The object in tracing the boundary was to give each country an equal share of the channel which ran between their possessions, and therefore the line was directed to be drawn midway and 'through the middle of the channel.'

"In this case it is General Cass who deserts the line of the treaty for an 'arbitrary line,' and that arbitrary line selected for no reason found in the treaty, deduced from the treaty, or applicable to the treaty.

"If I notice General Cass's allusion to the letters which he says Mr. Bancroft repeatedly wrote to Lord Palmerston in 1848, it is only for the purpose of placing on record what, no doubt, Mr. Bancroft duly reported to his Government at the time—viz., that Lord Palmerston gave Mr. Bancroft distinctly to understand that the British Government did not acquiesce in the pretensions of the United States that the boundary line should be run down the Haro Channel. But it is remarkable that it was in that very year, 1848, that the United States Senate gave orders for printing twenty thousand copies of Frémont's map, which, as well as the map prepared by the Surveyor-General of the State of Oregon, in October, 1852, carries the boundary line through the Rosario Strait. This is a circumstance of the greatest importance in determining the meaning of the treaty. General Cass has taken this occasion to assert that the whole concession of territory under the treaty of Washington, of the 9th of August, 1842, was made by the United States, and he has thought to bring a charge against the British Government in connection with that treaty.

"I am convinced it is best, on all accounts, that I should not follow General Cass in his endeavour to reopen that question. What Great Britain gave up by the treaty of 1842, for the sake of peace, is so well known, that any renewed controversy on the subject would be out of place. Her Majesty's Government have been animated by a like spirit in the course they have pursued with regard to the present question; and if they have maintained the claim of Great Britain to the pos-

session of San Juan, they have done so because they are convinced that the title of the British crown to that island is sound, and because the possession of the island by Great Britain is necessary to secure a safe passage to the British possessions on the mainland.

"General Cass says that no Government would be more likely than the Government of the United States to do justice to the agreement of mutual convenience, but he says he knows of nothing which brings the case of San Juan properly within that rule. The examination of the map, however, at once proves that this rule is peculiarly applicable to the present case.

"There are now shown to be two considerable channels, the Canal de Haro on the one side, which passes close to the British territory of Vancouver's Island, and the Rosario Channel on the other, which passes equally near to the American possessions on the mainland. If the possession of San Juan would give to Great Britain the command of the Haro Channel, the possession of the adjoining islands of Orcas and Lopez would equally give to the United States the command of the Rosario Channel, so that each country would command a safe highway to its possessions, free from all interference on the part of the other country.

"It is obvious that this would not be the case if San Juan was in the possession of the United States, who would then hold the command of both channels.

"San Juan is, therefore, a defensive position if in the hands of Great Britain; it is an aggressive position if in the hands of the United States. The United States may fairly be called upon to renounce aggression; but Great Britain can hardly be expected to abandon defence.

"I have thus endeavoured to meet the argument of General Cass in a spirit, I trust, of calm deliberation, such as befits two Governments who are sincerely desirous of arriving at a just solution of a question at issue between them. Her Majesty's Government recognise and appreciate the good faith and the regard for peaceful relations which have dictated the instructions to General Scott, and relying on the friendly feelings of

the American people, and on the earnest desires for peace which have been so often expressed by those in power in the United States, Her Majesty's Government will not permit themselves to think that that Government will decline the conciliatory offer of the British Government which your lordship is hereby instructed to repeat.

"You will, without loss of time, read this despatch to General Cass, and leave with him a copy of it.

"I am, &c. &c.,

"J. RUSSELL

"Lord Lyons."

To this Mr. Cass replied in the following communication to Mr. Dallas :(1)—

"Department of State,

"Washington, February 4, 1860.

"SIR,—You have already received a copy of Lord John Russell's note to Lord Lyons, dated December 16, in reference to the San Juan controversy, and I now enclose a copy of a previous note to Lord Lyons, dated November 29, which, I think, has not been transmitted to you.

"From this latter note, and especially from the conversation of Lord Lyons at the time it was left with me, I had little doubt that the reply of Lord John Russell to my despatch of the 20th October would contain such a withdrawal or explanation in reference to that part of his previous note to which I had felt obliged to take exception, as would relieve the discussion from any other embarrassment than that which necessarily belongs to a controverted claim. This expectation, however, has been wholly disappointed; and the last note of Lord John Russell—that of December 16—instead of containing any withdrawal of the objectionable declaration referred to, distinctly reaffirms it, while the only explanation offered is, that inasmuch as the island is important to Great Britain, therefore Great Britain means never to concede it. Since the abandon-

(1) American State Papers, p. 250.

ment of Her Majesty's Government of the Rosario Channel as the channel intended by the treaty, and the intimation now made by Lord John Russell that the Douglas Channel 'is the line most in accordance with the treaty, as well as with general policy and convenience,' the island of San Juan may fairly be regarded as the only subject now in controversy under the terms of that convention. To declare, therefore, that in no event will this island be conceded to the United States, is, in effect, to close the discussion; because, as I stated in my note of October 20, this Government cannot permit itself to negotiate with Great Britain, or any other Government, except upon terms of perfect equality, and there is surely no equality in a discussion where the claim of the one party is excluded in advance, and the only adjustment possible is that claimed by the opposite party. If, therefore, I decline, under existing circumstances, to pursue the discussion of the subject in question, and to present these considerations in reply to Lord John Russell's note, with which otherwise I should be glad to meet some of his lordship's suggestions, this is not from any reluctance to deal fairly with the issues presented, and still less from any want of friendly disposition towards Great Britain, but only because no other course would be consistent, in the opinion of the President, with that just respect which the Government owes to its own dignity and character. Her Majesty's Government, I think, will fully appreciate this avowal, if it will consider what would be the course of Great Britain were the positions of the two Governments reversed, and were the United States to assert, in the very threshold of a discussion, that whatever might be the course of the argument or the consequences of the determination, it would never yield to Great Britain the subject in dispute. Surely Her Majesty's Government would never think of entering into an argument which it was thus told in advance could produce no possible effect upon the practical adjustment of the controversy.

"I am aware that Lord John Russell endeavours to justify the declaration referred to by urging the great value of the island to Great Britain, and its inferior importance to the

United States; but even if his lordship's views in respect to this comparative value of the island were correct, I do not see how they can have any proper influence upon the decision of the question. That question is a question of title under the treaty of 1846. If the island belongs to Great Britain, she is entitled to hold it whether it is valuable or not; and if it belongs to the United States, this Government is entitled to its possession, even although it should be conceded to be of superior value to Great Britain. I am far from admitting, however, the justice of his lordship's views concerning the great importance of the island to Great Britain, either for 'aggressive' or 'defensive' purposes. If I felt myself at liberty to pursue the discussion, it would be easy to show that Lord John Russell has greatly overrated its military value. From the best information which I can obtain, it does not, as his lordship intimates, command the Canal de Haro. The surveys of that region show that the narrowest part of this water communication is about seven miles wide, while the general width is still greater. The shores on each side are bold and the water deep —in some places more than one hundred fathoms—so that vessels may sail within a short distance of the land along its whole extent. No fortification erected upon the coast of this canal can ever control its navigation; and therefore the great reason upon which Lord John Russell relies to justify the preliminary declaration to which I have adverted, seems to be grounded wholly upon a misconception of fact.

"There are other misconceptions in the note of his lordship, of which, under other circumstances, I should be glad to suggest the necessary corrections. His lordship, for example, attaches 'the greatest importance' to the order of the Senate in 1848 for printing twenty thousand copies of Frémont's map of Oregon and California, on which there appears to be a line of demarcation running down the Straits of Rosario, which his lordship appears to think shows conclusively the judgment of the Senate at that time as to the true water boundary. This error of his lordship arises from an entire misapprehension of the practice of the Congress of the United States in ordering

the printing of public documents. These documents are printed, for the most part, not only without any endorsement of their contents by either the House or the Senate, but generally also without any detailed examination of them, and when they come from a public officer, or are prepared in pursuance of a previous resolve, almost as a matter of course. Nothing can be more incorrect, therefore, than to suppose that the order of the Senate to print the map referred to implies any opinion whatever of that body in favour of its accuracy.

"But I am prevented from pursuing these considerations because, as I have already stated, the discussion has been practically foreclosed by the declaration of Lord John Russell, that it can, under no circumstances, affect the British claim. The President readily concedes the sincerity with which Her Majesty's Government maintains this claim, but the convictions of the Government of the United States in favour of its own title to the island of San Juan are entitled, surely, to equal respect, and he cannot permit this difference of opinion between the two Governments to be determined by one of them, or consent that what he regards as the just rights of the United States shall be yielded to any assertion of title by another power, no matter how peremptorily made or earnestly persisted in. Since, therefore, Lord John Russell repeats with great frankness his original declaration, that 'no settlement of the question will be accepted by Her Majesty's Government which does not provide for the island of San Juan being reserved to the British Crown,' I am directed by the President to state with equal frankness that the United States will, under all circumstances, maintain their right to the island in controversy until the question of title to it shall be determined by some amicable arrangement between the parties.

"You will read this despatch to Lord John Russell, and leave with him a copy of it.

"I am, sir, respectfully, your obedient servant,

"LEWIS CASS.

"George M. Dallas, Esq., &c. &c. &c."

Lord Russell replied as follows:—

"Foreign Office, March 9, 1860.

"My Lord,—I enclose a copy of a note from General Cass respecting the question of San Juan, communicated to me by Mr. Dallas, on the 2nd instant.

"It seems that the Government of the United States continues to take exception to the declaration contained in my despatch, No. 42, of the 24th of August, and brings forward that declaration as the ground for declining to continue the discussion.

"Your lordship has already, under the instructions contained in my despatches, Nos. 114 and 123, of the 29th of November and 16th of December, endeavoured, by frank and conciliatory explanation, to remove from the minds of the President and his ministers the misconception to which that declaration appears to have given rise.

"That explanation was offered by Her Majesty's Government in all sincerity and candour, and your lordship will, I doubt not, share the disappointment of Her Majesty's Government that it has not been accepted as satisfactory.

"I can only now repeat, and your lordship will earnestly impress this upon General Cass, that the United States Government has entirely misconceived the purport of my declaration.

"Her Majesty's Government readily subscribe to the *dictum* of General Cass, that, 'if the island belongs to Great Britain, she is entitled to hold it, whether valuable or not; and if it belongs to the United States, the United States Government is entitled to its possession, even although it should be conceded to be of superior value to Great Britain.'

"But Her Majesty's Government maintain that the island of San Juan does not belong to the United States.

"Your lordship will recollect that our proposal to make a compromise was declared to be without prejudice to our own claim to the Rosario Channel if that compromise were rejected.

"Her Majesty's Government maintain that either the Canal de Rosario or the Douglas Channel might be held to be the boundary contemplated by the treaty, but that the Canal de Haro neither fulfils the intentions of the British negotiators of the treaty, nor is consistent with the words of the treaty itself.

"Having given this further explanation, Her Majesty's Government trust that my despatch, No. 123, of the 16th December, will be answered, or its conclusions admitted by the Government of the United States.

"You will read this despatch to General Cass, and leave with him a copy of it.

"I am, &c., &c., "J. RUSSELL.

"Lord Lyons, &c., &c., &c."

The correspondence closed with the following letter from Mr. Cass to Mr. Dallas, and the next communication is the one already noticed from Lord Lyons to Mr. Cass,[1] in which he calls attention to the instructions issued by General Harney on the 12th of April, 1860:[2]—

"Department of State,
"Washington, April 23, 1860.

"SIR,—I enclose a copy of a note from Lord John Russell, on the subject of the San Juan question, which was left with me by Lord Lyons on the 28th ultimo.

"In this note the United States are assured that the declaration of Lord John Russell, in his despatch of the 24th of August last, to which the President felt obliged to take exception, was not intended to convey the meaning which this Government had attached to it; but that Great Britain entirely concurs with the United States that the question of title to the island of San Juan is to be determined by the provisions of the treaty, and not by the supposed value of the island, either to one party or the other; or, in other words, that 'if the island belongs to Great Britain, she is entitled to hold it, whether valu-

[1] *Ante*, p. 354. [2] American State Papers, p. 256.

able or not; and, if it belongs to the United States, the United States Government is entitled to its possession, even although it should be conceded to be of superior value to Great Britain.' The obstacle growing out of the declaration referred to having thus been removed by the frank explanation of Her Majesty's Government, the subject is now free from any other embarrassment than that which necessarily belongs to a controverted claim. It is only to be determined whether the Island of San Juan, under the treaty of 1846, belongs to the United States or Great Britain.

"In the correspondence which has already taken place on this question between the commissioners of the two Governments and the Governments themselves, the argument, on both sides, has been so fully presented as to leave very little to be added now. I regret, however, that what this Government regards as the controlling consideration which ought to govern the construction of the boundary clause of the treaty does not appear to have engaged that serious attention from Her Majesty's Government which its importance is believed to deserve. When it was shown that the parallel of 49° was the agreed boundary between the two countries, and that the deflection from it in the channel adjoining Vancouver's Island was for the sole purpose of leaving that island undivided to Great Britain, it was confidently hoped that the claim of Her Majesty's Government to still other islands in the channel would be at once and for ever abandoned. If the distinct object of a convention is distinctly understood, and there is no repugnance in the language used, it is surely reasonable to expect that it will not be construed by either party so as to accomplish an object entirely different. In this case there can be no reasonable doubt as to the intention of the parties upon the point referred to. It is not a case where one view was entertained by the American Government and an opposite one by the British Government, but the whole history of the negotiation, and all the evidence on both sides, lead inevitably to the same conclusion. If any doubt could still exist on this point, after the evidence which has already been presented, I

might quote, in further support of it, the explicit testimony of Sir Robert Peel, on the 29th of June, 1846, after the treaty had been approved by both Governments, and while he was engaged in explaining its provisions to the House of Commons, this distinguished statesman said: 'Those who remember the local conformation of that country will understand that that which we proposed is the continuation of the forty-ninth parallel of latitude till it strikes the Straits of Fuca; that that boundary should not be continued as a boundary across Vancouver's Island, thus depriving us of a part of Vancouver's Island, but that the middle of the channel should be the future boundary, thus leaving us in possession of the whole of Vancouver's Island, with equal right to the navigation of the straits.' It is quite clear from this language that Sir Robert Peel neither believed nor claimed that the deflection from the parallel of 49° had left Great Britain in possession of any other island or territory than the island of Vancouver; nor from anything which was publicly known at the time of the treaty can it be inferred that such a belief was entertained in any other quarter. It is equally true that, from that time to the present day, the construction thus given to the first article of the treaty by Sir Robert Peel has been steadily maintained by the United States. The conversation of Mr. Buchanan with Mr. Crampton, of January, 1848, to which Lord John Russell refers, constitutes no exception to this statement. If Mr. Buchanan understood the word channel in the convention to mean 'the main navigable channel,' as he is reported to have done by Mr. Crampton, he equally well understood that this 'main navigable channel' was the Canal de Haro, which he had distinctly mentioned as the treaty channel in his private letter to Mr. McLane, to which I referred in my despatch of October 20; and if, in the same conversation, he 'suggested that the point should be left for decision by the commissioners,' this only indicated his entire confidence in the result of their examination, while it anticipated the actual course of this Government when the commissioners were appointed. In the instructions under which Mr. Campbell entered on his duties, no restraint whatever was

placed upon his judgment on this point, but he was left entirely free to determine the boundary line according to the language of the treaty. I have already had occasion to express my regret that Her Majesty's Government did not feel itself at liberty to invest the British commissioner with the same discretion.

"I may be pardoned for suggesting that the course of the British Government has not been marked by the same consistency of claim. In the beginning of the discussion it was stated by Lord John Russell, in his despatch of August 24, 1859, that 'the British commissioner was clearly of opinion that both the boundary intended by the plenipotentiaries who negotiated the treaty of 1846, and also the channel spoken of in the treaty, is the channel known as Rosario Straits, and Her Majesty's Government fully share that opinion.' This opinion, however, was controverted by the statement of Lord Aberdeen, which was quoted in the same despatch, who is certain that it was the intention of the treaty to adopt the mid-channel of the straits as the line of demarcation, without any reference to islands; and by the *memorandum*, also, of Sir Richard Pakenham, who expressly declared that neither the Canal de Haro nor the Rosario Strait could, in his judgment, 'exactly fulfil the conditions of the treaty, which, according to their liberal tenor, would require the line to be placed along the middle of the channel (meaning, I presume, the whole intervening space) which separates the continent from Vancouver's Island.' The boundary, therefore, claimed by Lord John Russell and that described by the British negotiators of the treaty were two entirely different lines, the one being the Straits of Rosario, and the other a line of demarcation drawn midway between Vancouver's Island and the continent, without reference to any intervening islands. In his despatch to Lord Lyons of December 16, Lord John Russell appears substantially to abandon the former of these lines, and to adopt the line suggested by Lord Aberdeen and Sir Richard Pakenham, while in his last despatch on this subject, that of the 9th ultimo, he maintains that 'either the Canal de Rosario or the Douglas Channel might be held to be the boundary contemplated by

the treaty.' Thus we have presented the extraordinary case of three widely different boundaries, either of which it is claimed may be fairly regarded as the treaty boundary, while the only boundary excluded is that very boundary which was mentioned in distinct terms by Mr. McLane, Mr. Benton, and Mr. Buchanan at the time the treaty was negotiated, and which is the only one (as this Government conceives) that is quite consistent with the known intention of the treaty. These three boundaries have, indeed, the single point of agreement that they all leave to Great Britain the Island of San Juan; but this can hardly relieve the inconsistency of the British claim. Two of them, the Rosario Channel and the Douglas Channel, are excluded by the concurrent testimony both of the American and British negotiators, and it is difficult to understand how they can be further insisted on by the British Government. The only choice remaining, therefore, is between the Canal de Haro and the arbitrary line of demarcation described by Mr. Pakenham. The considerations which seem to this Government quite decisive in favour of the Canal de Haro, were sufficiently stated in my despatch of last October, and need not be repeated here. In reference, however, to the line suggested by Mr. Pakenham, it is sufficient, perhaps, to observe that since the British Government appears to have concurred with Mr. Buchanan in 1848 that the line to be chosen was the 'main navigable channel' between the point of deflection and the Straits of Fuca, it can hardly contend now that this requirement is answered by adopting a boundary which passes alike over land and water, and furnishes, of course, no channel at all.

"In thus alluding to the several boundaries which have been suggested by Great Britain as treaty boundaries, I do not forget that the Douglas Channel has been proposed from the beginning as a convenient *compromise*, however, upon the assumption that the Straits of Rosario are still claimed by Great Britain as the channel intended by the convention; and as this claim, for reasons which I have already referred to, can hardly now be maintained, I do not think that the British offer

should any longer be considered as an offer of compromise. The whole subject in question is the Island of San Juan, which is claimed on the one side by the United States, and on the other side by Great Britain; and a proposal which gives the island to Great Britain is a proposal to surrender the whole American claim, and not, in any sense of the term, a proposition to compromise. The argument, from convenience, moreover, which is so earnestly pressed by Lord John Russell, seems to me, I confess, to have very little foundation. I cannot understand why the access by Great Britain to her American possessions would be any the less easy or safe because the Island of San Juan had been conceded to the United States. All the channels and the straits are equally open to both nations; and, in a military point of view, I have already shown that, from the great width of the Canal de Haro, its navigation could never be interrupted by the establishment of works on the Island of San Juan. While, therefore, the President feels himself obliged to decline to adopt the Douglas Channel as the boundary of the two countries between Vancouver's Island and the continent, and to maintain the Canal de Haro as the true boundary in that quarter, which was intended by the treaty, he is glad to believe that no serious injury can be inflicted upon British interests by the adoption of the American line. It is deeply to be regretted, certainly, that the views of the two Governments upon the subject are so directly opposed, but he confidently hopes, by some early arrangement, alike acceptable to both nations, this difference of opinion may yet be amicably adjusted.

"You will read this despatch to Lord John Russell, and leave with him a copy of it.

"I am, sir, respectfully, your obedient servant,

"LEWIS CASS.

"George M. Dallas, Esq., &c., &c., London."

The letter of Lord Lyons[1] dated June 6th, 1860,

[1] American State Papers, p. 256.

was followed by General Harney's recall, as above described; and on the 25th of June the correspondence was re-opened with a letter from Mr. Cass to Lord Lyons, offering to consider any proposition which the British Government might make for an adjustment of the question.

Mr. Douglas Irvine, of the British Legation,(1) replied, on the 17th of August, by the direction of Lord Lyons, proposing that the civil magistracy should be removed on both sides from the island, and that a military jurisdiction should be established, on the basis of the arrangement effected by General Scott; or that a separate jurisdiction should be established over different portions of the island in the hands of the British and American magistrates. He also proposed that the affair should be definitely arranged by means of a convention or an exchange of notes between the State Department and Her Majesty's Legation.

Mr. Trescot, Acting Secretary of State, replied on behalf of the United States Government, in the following letter:(2)—

"Department of State,

"Washington, August 18, 1860.

"SIR,—I have the honour to acknowledge the receipt of your note of the 17th instant, in which you say that Her Britannic Majesty's Government, desirous to remove all uncertainty from the question of the temporary jurisdiction of the Island of San Juan, instructs you 'to propose to the Government of the United States that the civil magistracy should be removed on both sides from the island, and that a military

(1) American State Papers, p. 262. (2) *Idem*, p. 263.

jurisdiction should be established, on the basis of the arrangement effected by General Scott, or that a separate jurisdiction should be established over different portions of the island, in the hands of British and American magistrates,' and in which you further propose that 'the matter should be definitely arranged by means of a convention, or by an exchange of notes between the State Department and Her Majesty's Legation.'

"In reply, I would say that the Government of the United States share the anxiety of Her Britannic Majesty's Government for the removal of all uncertainty from this question; but as far as this desirable end can be reached by 'an exchange of notes between the State Department and Her Majesty's Legation,' it has already been effected; and in this connection I would respectfully call your attention to the correspondence between Mr. Marcy and Mr. Crampton, under the respective dates of the 17th and 18th of July, 1855, and between General Cass and Lord Lyons, of the 6th and 8th of June last, and especially to the following extract from the letter of Lord Lyons, complaining to his Government of General Harney's orders: 'It would be superfluous to remark upon the inconsistency of the whole tenor and spirit of these orders with the satisfactory arrangement made by General Scott in November last;' and to another extract from the reply of General Cass: 'I am now instructed to inform you that the arrangement entered into by General Scott, in the month of October, 1859, in order to prevent any collision upon the island of San Juan between the American and British authorities, pending the negotiations between the two Governments, was strictly in pursuance of a previous arrangement which was made with Mr. Crampton by the Secretary of State of the United States, in July, 1855, and met the full approval of this Government;' and it may, perhaps, not be improper to recall the fact that it appears from the reported proceedings of Parliament that Lord John Russell has declared this reply perfectly satisfactory.

"This Department is, therefore, of opinion that it has already, by the exchange of notes with Her Majesty's Legation,

anticipated the first of the alternative propositions which you have submitted; and it deems this an opportune occasion to invite the serious attention of Her Britannic Majesty's Government to the great inconvenience of the existing condition of things on the Island of San Juan, and to express the hope that Her Britannic Majesty's Government will, before long, remove the necessity of any temporary arrangement, by the final and permanent settlement of the question.

"I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

"WILLIAM HENRY TRESCOT,
"Acting Secretary.

"W. Douglas Irvine, &c., &c., &c."

Subsequently, Lord Lyons wrote to Mr. Cass as follows: (1)—

"Washington, December 10, 1860.

"SIR,—In the note which you did me the honour to address to me on the 25th June last, you informed me that the President was equally solicitous with the Government of Her Majesty for the amicable and satisfactory adjustment of the questions at issue between the two countries, respecting the execution of the treaty signed at Washington on the 15th of June, 1846. You added that the Government of the United States would be ready to receive and fairly to consider any proposition which Her Majesty's Government might be disposed to make for a mutually acceptable adjustment, with an earnest hope that a satisfactory arrangement would speedily put an end to all danger of the recurrence of those grave questions which have more than once threatened to interrupt that good understanding which both countries have so many powerful motives to maintain.

"The absence from England of Her Majesty's Secretary of State for the Colonies prevented Her Majesty's Government from enabling me to make an earlier reply to this communica-

(1) American State Papers, p. 264.

tion. But Her Majesty's Government have not relaxed in their desire to close the controversy with regard to the complete execution of the treaty; and, in the confident hope of settling the whole matter in a manner satisfactory and honourable to both parties, they have directed me to lay before you the proposals which I shall proceed to state in this note.

"The two points which have been in discussion are, first, the fulfilment of the obligations undertaken by the United States in respect to the Hudson's Bay and Puget Sound Companies; and, secondly, the determination of the line of water boundary intended by the first article of the treaty. With regard to the first point, the President said to me, in the course of a conversation which I had the honour of holding with him on the 11th July last, that the best and most expeditious mode of settling the question would be for the companies to state at once the lowest sum for which they would sell their rights to the United States. Upon receiving from me a report of this conversation, Lord John Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, sent for the Governor of the Hudson's Bay Company and explained to him what the President had said to me on the subject of the Company's claims.

"The Governor informed Lord John Russell, in reply, that if the Company were called upon to fix the amount which they should ask for the extinction of their claims, they should name a sum of six hundred and fifty thousand dollars. He observed that they had been assessed at seven hundred thousand dollars, and that in the United States, as in England, the assessment is always below the real value. The Governor added that this sum of six hundred and fifty thousand dollars would be an assessment on land and buildings alone, and would not include any compensation for privileges.

"Considering all the circumstances, Lord John Russell recommended the Company to reduce their claim to five hundred thousand dollars; and this sum the Company have stated their readiness to accept.

"I am, accordingly, instructed to state to you, sir, that, if

the United States Government will agree to pay the Hudson's Bay and Puget Sound Companies a sum of five hundred thousand dollars in extinction of all their claims against the United States under the treaty of June 15, 1846, Her Majesty's Government will be prepared to accept that amount on behalf of the two Companies, and to release the United States Government from all further liability, so far as regards their engagements to Great Britain under the third and fourth articles of that treaty in behalf of the Hudson's Bay and Puget Sound Companies in Oregon, whether on account of lands and buildings, or on account of privileges mentioned in the aforesaid articles.

"In reference to the line of water boundary intended by the treaty, with respect to which Her Majesty's Government have been invited by the United States Government to make a proposition for its adjustment, your Lordship will inform General Cass that Her Majesty's Government are glad to reciprocate the friendly sentiments contained in his note of the 25th of June, and will not hesitate to respond to the invitation which has been made to them.

"It appears to Her Majesty's Government that the argument on both sides being nearly exhausted, and neither party having succeeded in producing conviction in the other, the question can only be settled by arbitration.

"Three questions would arise thereupon:—

"1. What is to be the subject matter of arbitration?

"2. Who is to be the arbiter?

"3. What is to be the result of the decision of the arbiter?

"With regard to the first point, Her Majesty's Government are of opinion that the question or questions to be referred should be: What is the true meaning of the words relating to the water boundary contained in Article I. of the Treaty of June 15, 1846? Or, if the precise line intended cannot be ascertained, is there any line which will furnish an equitable solution of the difficulty, and is the nearest approximation that can be made to an accurate construction of the words of the treaty?

"In considering these questions the arbiter might fairly consult all the correspondence on the subject, and weigh the testimony of the British and American negotiators of the treaty as to their intentions in framing the article. But he should not depart from the true meaning of the article as it stands, if he can deduce it from the words agreed to by both parties, and consigned in a treaty ratified by both Governments.

"Secondly, Her Majesty's Government are of opinion that a reigning Prince or sovereign State should be the arbiter. Her Majesty's Government propose with this view that the King of the Netherlands, or the King of Sweden and Norway, or the President of the Federal Council of Switzerland, should be invited to be the arbiter.

"With regard to the third point, Her Majesty's Government are desirous that this long controversy should not be again thrown loose for dispute. They therefore propose that both Governments should bind themselves to accept the decision of the arbiter, whether he shall give a positive decision or whether he should declare that he cannot fix the precise meaning of the article in question, but that he has laid down on the chart a line which will furnish an equitable solution of the difficulty, and is the nearest approximation he can make to an accurate construction of the words of the treaty.

"Should these proposals be accepted, Her Majesty's Government flatter themselves that an equitable decision may be arrived at, and a long and dangerous controversy terminated in a manner consistent with the honour and the interests of both Governments.

"I have the honour to be, &c., "LYONS.

"Hon. General Lewis Cass, Secretary of State."

On the 3rd of December, 1860, Mr. Buchanan, then President of the United States, referred to the boundary question in his "Message" in the following terms:—

"The only question of any importance which still remains

open is the disputed title between the two Governments to the Island of San Juan, in the vicinity of Washington Territory. As this question is still under negotiation, it is not deemed advisable at the present moment to make any other allusion to the subject."

I should notice here that this statement was not quite correct, inasmuch as the compromise offered by the British commissioner on the part of his Government having been declined by the United States, the question between the two Governments was not merely as to the title to the island of San Juan, but as to the position of the boundary line under the treaty of 1846.

The Secretary of the Interior (United States) recognised the fact that the dispute was as to the title to the entire archipelago, in his report of the year 1861-2, when he stated that the "Surveyor-General (Washington Territory) was not authorised to survey the islands between the Straits of Rosario and Haro, upon some of which settlements by our people have also been made, particularly upon the island of San Juan, the survey of those islands being deferred until the international lines shall have been fully determined."(1)

On the 12th of April, 1861, the first shot was fired by the Confederates against Fort Sumter, and the parties of the North and South stood committed to a great and terrible war, in the face of which all other controversies became of minor importance. Great Britain, with her usual magnanimity, did not press the question of the boundary upon the Govern-

(1) United States Messages and Documents, 1861-2, p. 471.

ment of the United States in her hour of trial, and it remained in abeyance until the year 1868.

The boundary commission above mentioned was closed on the 20th of May, 1862, having been in existence since the 20th of December, 1856. The island remained under the joint occupation of the two Governments, and it appears that Captain Gray was appointed to the command of the United States detachment of troops. The difficulties which arose between that officer and the civil authorities of Washington Territory are well described in a humorous despatch from Mr. Brown, Deputy United States Marshal to Mr. Seward, from which the following is an extract :—

"United States Marshal's Office,
"Port Townshend, W.T., September 20, 1866.

"DEAR SIR,—Allow me to call your attention to the fact that difficulties are on the point of occurring between the military authorities of the United States on San Juan Island and the civil authorities of Washington Territory.

"Captain Gray, of the United States forces, having exercised arbitrary power over the citizens, process was issued out of the United States district court of the third judicial district of Washington Territory for his arrest; he refused to be arrested, and the sheriff returned the process to that effect. When the judge ordered him to summon a posse and bring him, he was met by force, and he returned the process unserved, and the court has now adjourned; but the judge ordered a *capias* to issue to the sheriffs of the different counties of the third judicial district, and to enforce the orders and process of the court. Therefore there is a probability of being trouble, unless the Department of State settle the question as to the authority of either the military or civil power over the island. The citizens claim the protection of the court, and

Judge Darwin means to enforce civil law upon the island, if it requires all the force of the Territory. Therefore, something should be done immediately by the Department of State, or serious difficulties must arise.

* * * * * * *

"JARED C. BROWN,
"Deputy United States Marshal.

"Hon. William H. Seward."

Mr. Seward referred the matter to Mr. Stanton, Secretary of War, who referred it to General Grant (now President of the United States) by whom it was passed on to one of his aides-de-camp, General Babcock, who reported thereon as follows :(1)—

"Head-quarters Armies of the United States,
"Washington, D.C., December 6, 1866.

"GENERAL,—In compliance with the request of the General-in-chief, I have the honour to submit the following information concerning the difficulty existing between the civil authorities of Washington Territory and the commanding officer, Captain Gray, 2nd United States Artillery, of the military post on San Juan Island, Puget Sound.

"I first heard of the trouble at General Steele's head-quarters, Fort Vancouver, Washington Territory, and, as I remember, it was in substance as follows:—A citizen living on the island, owning land lying between the landing and the military post, becoming displeased with the military authority, built a fence across the road leading from the post to the landing. He was notified to remove it, but would not, and continued the trouble until Captain Gray ejected him from the island. General Steele did not expect any collision between the civil and military authorities. I may be mistaken in the facts of the case, but I give them as I remember General Steele's statement.

"Our title to the island is disputed by the English Government, and, according to the agreement for joint occupancy,

(2) American State Papers, p. 267.

until the question of title is settled, each Government is to keep one company of troops on the island, with no artillery. Now if the military is withdrawn, our title to the island is given up. It therefore seems to me that the military is the superior authority on the island, and should be thus recognised.

"I am, General, very truly, your obedient servant,

"O. E. BABCOCK,

"Brevet Brigadier-General and Aide-de-camp.

"Major-General Rawlins, Chief of Staff."

The difficulties in which the United States troops are placed are further illustrated by the following report from Major-General Halleck, commanding the Military Division of the Pacific :—

"San Francisco, California, November 18, 1867.

"GENERAL,—I beg leave to call the special attention of the War Department, and through it the Department of State, to the present condition of affairs on San Juan Island, and the other islands which form the De Haro Archipelago, between the Straits of De Haro and Rosario.

"It is hardly necessary to recapitulate the circumstances which led to the conflicting claims of Great Britain and the United States to this Archipelago; and the resulting difficulties between the authorities of Washington Territory and British Columbia, in which the military on both sides became involved.

"These difficulties were temporarily arranged, or supposed to be arranged, by an agreement between General Scott and Admiral Baynes, in 1859, for a joint *military* occupation of the disputed territory, thus excluding the civil jurisdiction of both parties. This anomalous arrangement was easily carried into execution on the part of the British Government, as the civil and military affairs in the colony are under the same head and directed by the same person. But not so with us. General Scott's agreement, although approved by the Executive, had not the sanction of law, and was repudiated by the civil autho-

rities of Washington Territory as of no binding force. They therefore continued to claim the right to collect taxes, execute judicial process, &c., in the disputed territory. Moreover, the United States officers of customs claimed the right to enforce our revenue laws on the same islands. Both of these claims may have been lawful, but they were entirely incompatible with the Scott-Baynes arrangement for exclusive *military* occupation; and to permit them to be carried out would be a virtual abrogation of that agreement, and a renewal of the very conflict of jurisdiction which it was intended to avoid. Hence our military officers, under instructions sanctioned by the War Department, forcibly resisted every attempt of our customs and territorial officers to exercise civil authority on these islands. By this course they have avoided all difficulties between the two nations in regard to claims of ownership of the disputed territory; but it has involved them in serious personal difficulties. Brevet-Major Graves, Lieutenant Second Regiment of Artillery, has been arrested and put under heavy bonds for resisting the civil jurisdiction of Washington Territory on San Juan Island, and Captain Gray has been fined five thousand dollars ($5,000) for the same alleged offence. Undoubtedly other officers of the command on that island will receive similar treatment as soon as they can be arrested by the civil officers of Washington Territory.

"In other words, we have this anomalous condition of affairs on that frontier:—The military officers of the United States are required to prevent the exercise of civil jurisdiction on the disputed islands, while the civil officers of the same Government insist upon its execution, and proceed to punish the former for the very acts which are required of them by the War Department.

* * * * *

"Very respectfully, your obedient servant,

"H. W. HALLECK,
"Major-General.

"Adjutant-General of the Army,
"Washington, D.C."

It will be evident that the Supreme Government of the United States, however well intentioned towards Great Britain, and however determined to maintain the Scott-Baynes or Scott-Douglas arrangement, will not long be able to preserve the joint military occupation of the island upon its present basis. The civil and military authorities in Victoria, the capital of British Columbia, reside in the British Governor for the time being, hence there is no conflict between the British civil and military authorities on the Island of San Juan, and the task of our officers is comparatively easy. But owing to the anomalous nature of the relations between the Supreme Government and the states and territories subject to its sway, the United States military authorities upon the island are placed in a most invidious, not to say dangerous position.

On the 18th of December, 1867, a resolution of the United States Senate was passed requesting information in regard to the Island of San Juan, in Puget's Sound. (It may be noticed that the island is not situate in, but near Puget's Sound.) Accordingly, a number of papers were collected and printed, containing a vast amount and variety of information upon the subject; from these papers this work has been mainly compiled, and they are cited as "American State Papers."

They were presented to the Senate of the United States by the President on the 20th of February, 1868, together with a report from Mr. Seward, Secretary of State. That report was also dated the 20th of February, 1868, and was as follows:—

"Department of State, February 20, 1868.

"The Secretary of State, to whom has been referred the resolution of the Senate of the 18th of December last, requesting the President to communicate to the Senate, if not incompatible with the public interests, 'any agreement between the Government of the United States and that of Great Britain in relation to the occupation of San Juan Island, in Puget Sound, with copies of any correspondence on the subject of the claims of the respective governments to said island, and a statement of the reasons why the Government of the United States has permitted a joint occupation of the same to Great Britain,' has the honour to submit a copy of such of the papers called for by the resolution as are in the possession of this department.

"These papers consist of the reports and correspondence of Archibald Campbell, the commissioner on the part of the United States to carry into effect the first article of the treaty of the 15th of June, 1846, between the United States and Great Britain, with a copy of his correspondence with Captain Prevost, the commissioner on the part of Her Britannic Majesty's Government in relation to the boundary line between the continent and Vancouver's Island, and a general discussion of the subject of the claims of the United States and Great Britain to San Juan and other islands of the Haro Archipelago; correspondence between Lewis Cass, Secretary of State, and Lord Russell, the Secretary of State for Foreign Affairs of Great Britain, in regard to the disputed boundary; Senate executive document No. 10 of the thirty-sixth Congress, first session, containing a Message of the President of the United States, 'communicating, in compliance with a resolution of the Senate, the correspondence of Lieutenant-General Scott concerning the Island of San Juan, and papers relating to his mission to the territory in dispute.' The papers transmitted include also recent correspondence between this Department and the War Department concerning the manner in which the joint military occupation, at first declined by the Governor of Vancouver's Island, pending instructions from

his Government, was subsequently effected; and still later correspondence between the two departments in reference to the existing condition of affairs at San Juan, all of which papers are enumerated more in detail in the subjoined list.

"From the papers contained in the Senate document above mentioned, and the communication of the 16th of January, 1868, from the War Department, it appears that General Scott, under the authority of James Buchanan, President of the United States, proposed to the Governor of Vancouver's Island a joint military occupation of the island of San Juan 'for the temporary adjustment of any present difficulty until the two Governments should have time to settle the question of title diplomatically;' but the Governor did not then assent to the proposition, for the reason, as stated by himself, that he could not do so 'without the sanction and express instructions of his Government;' but that in the ensuing spring of 1860, Admiral Baynes, in command of the British squadron on that station, sent a detachment of marines to the northern part of San Juan Island, 'for the purpose of establishing a joint military occupancy agreeably to the proposition of Lieutenant-General Scott.'

"A recapitulation of some of the more striking facts in relation to the north-western boundary which appear in the accompanying documents, and in the earlier diplomatic correspondence preceding the treaty, may be useful and convenient.

"In the various negotiations which took place between the United States and Great Britain for the settlement of the Oregon controversy, the United States made the proposition that the boundary line should run along the forty-ninth parallel. This line was proposed as a compromise of their conflicting claims to the territory west of the Rocky Mountains, between the latitudes of 42° and 54° 40′. For a long period the British Government persisted in asserting a claim to the territory lying to the westward of the Columbia river. This pretension was adhered to until a short time previous to the

conclusion of the treaty of 1846, when they so far receded from their position that they were willing to adopt the proposed compromise, provided that Vancouver's Island were left to the undivided jurisdiction of Great Britain. The United States finally consented to this concession, and a boundary was adopted having in view this object. This boundary is defined in the first article of the treaty of June 15, 1846, in the language following:—

"'ARTICLE I.

"'From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United States and those of Her Britannic Majesty shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel and of Fuca's Straits to the Pacific ocean: *Provided, however*, That the navigation of the whole of the said channel and straits south of the forty-ninth parallel of north latitude remain free and open to both parties.'

"Every officer of the Government, so far as the sources of information open to this department show, who had any part in the negotiation, adoption, or ratification of the treaty, assented to it with the full understanding that the deflection of the boundary from the forty-ninth parallel was consented to for the sole purpose of giving the whole of Vancouver's Island to Great Britain, and that to effect this purpose the line was to be carried through the Canal de Haro to the Straits of Fuca, on its way to the Pacific Ocean. This line gives to the United States the Haro Archipelago, of which San Juan Island forms a part.

"The treaty having been concluded, and the exciting controversy of forty years having been settled, the Government of the United States remained, for a time, without any further interest in the boundary, awaiting the settlement of the

country before exhibiting any anxiety to have the line definitively marked.

"In November, 1846, Mr. Bancroft, then Minister of the United States at London, communicated to this department his apprehensions of a design on the part of Great Britain to claim the boundary line to be through the Rosario Strait instead of the Canal de Haro, so as to throw the island of San Juan and the other islands of the Haro Archipelago within the limits of British jurisdiction. Mr. Bancroft met this pretension promptly, and for a time it was apparently abandoned. He was then under the impression that the Hudson's Bay Company were the parties who sought to possess that valuable group of islands, and that the British ministry did not favour their proceedings.

"In January, 1848, Mr. Crampton, the British diplomatic representative accredited to the United States, under instructions from his Government, made a proposition to the United States to appoint joint commissioners for the purpose of determining the water boundary. With this proposition was presented a draught of joint instructions to the commissioners, framed so as to leave but little for them to do except to run the line through the channel which would give to Great Britain all the islands of the Haro Archipelago.

"In 1852, the territory of Oregon, by an act of their legislature, included the Haro Archipelago in one of its counties; and after the passage of this act, the Hudson's Bay Company established a post on San Juan Island. When the Territory of Washington was created these islands were declared by the legislature of that Territory to form a part of Whatcom County. In 1855 the property of the Hudson's Bay Company on San Juan Island was assessed in the same manner as other property within the Territory, and upon their refusal to pay the taxes, their property was advertised and sold, in the usual way, to satisfy the demand. This led to a correspondence between the Governors of Vancouver's Island and Washington Territory, in which the former declared that he had the orders of Her Majesty's Government to regard the

islands of the Haro Archipelago as a part of the British dominions. This correspondence, with a heavy claim for damages, was laid before this department by John F. Crampton, Esq., the British minister here at the time, with a renewal of his proposition for the appointment of a joint commission to determine the boundary line, and in the event that the proposal could not be met by the Government of the United States without difficulty or delay, he suggested 'the expediency of the adoption, by both Governments, of the channel marked as the only known navigable channel by Vancouver, as that designated as the treaty.' In other words, the United States were requested to run the line through Rosario Strait and give up to Great Britain the Haro Archipelago.

"The Executive complied with Mr. Crampton's proposal so far as to recommend to Congress the creation of a commission to determine the boundary line, and on the 11th of August, 1856, an act was passed authorising a commission, on the part of the United States, to unite with similar officers to be appointed on the part of the British Government. Instead of adopting the proposed joint instructions to the commissioners, each Government instructed its own commissioner as to the duties he was to perform.

"In 1857 the commissioners met at Esquimault harbour, Vancouver's Island, and exchanged credentials, with the understanding that they were mutually invested with full powers; and the discussion of the boundary question took place with this understanding on the part of the United States commissioner.

"The discussion thus entered into, in connection with the subsequent diplomatic correspondence on the subject, merits careful attention as an exposition of the views of the two Governments in relation to the channel contemplated by the treaty. The United States commissioner bases his claim to the Canal de Haro on the ground that it is the *main* channel south of the forty-ninth parallel leading into the Straits of Fuca, and that it accomplishes the sole object for which the line was deflected south from the forty-ninth parallel, instead

of being extended on that parallel to the ocean, namely, to give the whole of Vancouver's Island to Great Britain. His first position is based upon the charts and maps extant at the date of the treaty, and those of latest dates, which show the Canal de Haro to be by far the widest and deepest channel. The second view seems quite as strongly supported by the contemporaneous evidence of those who took part in negotiating the treaty.

"The British commissioner lays claim to Rosario Straits, on the ground that it answers to what he designates as the '*very peculiar wording*' of the treaty; that is, he assumes that the Rosario Strait specially meets the requirement of the language, 'separates the *continent* from Vancouver's Island;' whereas, the Canal de Haro merely separates *Vancouver's Island* from the continent. And he intimates that the name of the Canal de Haro was omitted in the wording of the treaty, and the usual mode of expression (separating the lesser object from the greater) was designedly reversed in order to carry the boundary line through the Rosario Strait. He presents no contemporaneous evidence, however, to support either his peculiar argument in relation to the language used, or his statement concerning the omission of the Canal de Haro.

"The two commissioners disagreed in regard to the boundary channel. The British commissioner having failed to produce any evidence to substantiate his claim that the Rosario Strait is the channel intended by the treaty, or to produce rebutting contemporaneous evidence to that presented by the United States commissioner in favour of the Canal de Haro, offered as a compromise an intermediate narrow channel, which would throw the island of San Juan, the most valuable of the whole group, on the British side of the line. This compromise the United States commissioner refused to accept.

"A perusal of the instructions of the two Governments to their commissioners respectively, will throw much light upon the discussion and its result.

"The commissioner of the United States was left untrammelled by those addressed to him, and sought to carry out the

intentions of the negotiators of the treaty by consulting all the evidence that could be found for his guidance, determined to carry the treaty into effect by running the line through the channel intended by them, wherever that channel was to be found.

"The instructions to the British commissioner, however, were in substance the same as those proposed by Mr. Crampton for the two Governments to the joint commission, to run the line through the Rosario Strait, allowing him the discretionary power to adopt an intermediate channel, provided that the United States commissioner could not be induced to accept the channel claimed by the British Government. Under no circumstances, however, does he appear to have had the power to accept any channel that would not give his Government the Island of San Juan. This is clearly ascertained from his instructions, and the British commissioner leaves no doubt on the subject when he writes in his letter offering a compromise channel, 'beyond what I now offer I can no further go.'

"From the correspondence which took place between Mr. Cass, Secretary of State, and Lord John Russell, the British Secretary of State for Foreign Affairs, after the discussion between the joint commissioners had closed, it appears that the British Government renewed the proposition for compromise made by their commissioner, but it was declined. Mr. Cass, as will be seen by the accompanying copy of a note of the 25th of June, 1860, to Lord Lyons, then called upon the British Government to make a proposition for the adjustment of the difference between the two Governments. This suggestion was renewed by Mr. Trescot, Acting Secretary of State, on the 18th of August, 1860, in a note to Mr. Irvine, Chargé d'Affaires *ad interim* of Great Britain, and that Government proposed that the question should be left to the arbitration of one of the three following European powers, namely, Belgium, Denmark, or the Swiss Republic. This proposition was made in the note from Lord Lyons of the 10th of December, 1860, to General Cass, and no reply or counter proposition has been made to it.

"During the late civil war it was not deemed advisable to pursue the negotiation upon the subject, and the questions between the United States and Great Britain arising out of that war have hitherto been so engrossing, that it has not been convenient to bestow attention upon others. It is hoped, however, that a suitable juncture for that purpose will soon occur, and that the point at issue may be amicably adjusted to the mutual satisfaction of the parties.

"The accompanying papers, maps, and cross-section will, it is believed, present to Congress the merits of the question, and the grounds upon which the executive department of this Government has claimed that the Island of San Juan and the other islands of the Haro Archipelago are within our boundaries as defined by the treaty.

"With reference to the question of joint occupation of the Island of San Juan by military forces of the United States and Great Britain, it will be seen from the accompanying papers which relate to that subject that the arrangement was made during the administration of James Buchanan, with a view to avert collisions between the settlers or the military forces of the respective countries, such collisions being supposed to be imminent in 1859. The arrangement, however, is temporary in its character, and was made upon condition that no prejudice to the claim of either Government should result therefrom.

"Respectfully submitted.

"WILLIAM H. SEWARD.

"The President."

CHAPTER XV.

MEANWHILE other highly interesting questions had arisen and grown into importance between the two countries, as, the Alabama claims; the Naturalisation Question; the Fishery Question; and the Reciprocity Treaty (Canada). Early in the year 1868, Mr. Adams, United States Minister at the Court of St. James's, received a despatch[1] from Mr. Seward, in which reference was made to the three first-mentioned questions and to the Boundary Question, as being such as "might at any time, from accidental causes, occupy public attention, and give rise to exciting controversy." Mr. Seward, at the same time suggested that "the true method of dealing with all these matters was by treating them jointly, and endeavouring, by means of a Conference, to settle them all." The "give and take" mode of dealing with and settling a variety of questions and disputes which have arisen between private persons is one which in theory will readily recommend itself to the mind; but a practical experience of such a mode of settlement will bring out many difficulties, at first hidden and unseen. The difficulties in the way of such a mode of treatment become almost insuperable when the questions at issue have arisen

[1] Correspondence respecting the negotiations with the United States Government, presented to Parliament (1869), p. 1, No. 1.

between two mighty empires, whose policy respectively is actuated by myriads of conflicting interests, the advantage of one part of the empire being (apparently at least) incompatible with that of some other parts. Thus, under the principle above referred to, one of two Governments engaged in settling mutual claims, might be expected to set off injuries, received by its subjects from the other Government, against injuries inflicted by itself upon the subjects of the other; and considering a State as an abstraction, such a settlement would appear highly equitable. Either State would be benefited, and therefore, it might be urged, all the subjects of each would receive benefit. But the claimants themselves, the parties really injured, are their particular interests to be forgotten and overlooked, or in what manner are their claims to be arranged?

Lord Stanley, then Minister for Foreign Affairs, appears to have appreciated the difficulties in the way of such a mode of treating the question, for when Mr. Adams communicated to him the contents of the above despatch, he replied that he could not well understand what was to be the nature of the Conference suggested by Mr. Seward; and asked, "How it was to be constituted? with what powers? where to be held? and what advantage did Mr. Seward suppose there would be in discussing simultaneously, instead of separately, a variety of matters(1), each of which was sufficiently intricate and perplexing when taken

(1) Correspondence respecting the negotiations with the United States Government, presented to Parliament (1869), p. 1, No. 1.

by itself?" The Naturalisation Question was considered by the United States Government to be that which most immediately pressed for settlement, and when, after some correspondence, it appeared that an arrangement would be arrived at, Mr. Reverdy Johnson, Mr. Adams's successor, received the following instructions from his Government:(1)—

"In case Her Majesty's Government shall adopt the required measures to adjust the naturalisation question, you will next be expected to give your attention to the adjustment of the north-west boundary controversy, which involves the right of national dominion and property over the Island of San Juan on the frontier line between the United States and British Columbia.

"It is understood that on the breaking out of the recent civil war in the United States, this boundary question was on the eve of being arranged by referring it to an impartial and friendly arbiter. The question is increasing in urgency with the growing settlements and population of the North-West, and with the multiplication of causes of litigation within the disputed territory. The United States still remain in a disposition favourable to the process of adjustment originally contemplated. . . . . Our conclusion is, that in the event that you become convinced that an arrangement of the naturalisation question which would be satisfactory to the United States, in view of your previous instructions, can be made, then and in that case, you may open concurrent negotiations upon the two questions first herein named—to wit, San Juan and the Claims questions; but that those two negotiations shall not be completed, or your proceedings therein be deemed obligatory, until after the naturalisation question shall have been satisfactorily settled by treaty or by law of Parliament."

On the 25th of September, 1868,(2) a conversation

(1) Correspondence respecting the negotiations with the United States Government, presented to Parliament (1869). p. 8, No. 12.

(2) *Idem*, pp. 17, 19, No. 20.

took place at the Foreign Office between Lord Stanley and Mr. Reverdy Johnson, with reference to the "Alabama" claims, in the course of which the latter suggested, as a means of settlement, either the payment of a lump sum of money, or a *cession of territory* by Great Britain to the United States. Lord Stanley appears to have considered both these plans inadmissible, so long as the question of the liability of Great Britain to pay such claims was denied by the Government, and the question as to such liability remained undecided. His Lordship does not appear to have stated that the people of this country could never be brought to assent to any cession of territory, and from his own version of the conversation, he does not appear to have evinced any surprise or indignation at the humiliating proposal of Mr. Johnson.

On the 9th of October, 1868, a protocol(1) was signed by Lord Stanley and Mr. Johnson, showing the principles agreed upon by the British and United States Governments on the question of naturalisation, and they afterwards entered upon a discussion of the San Juan question.

It was then mutually agreed that a protocol(2) should be drawn up for the purpose of referring the question to arbitration, containing a proviso (at the express desire of Mr. Johnson) that the operation of the protocol should be dependent on the satisfactory settlement of the naturalisation question by treaty,

(1) Correspondence respecting the negotiations with the United States Government, presented to Parliament (1869), p. 7.

(2) *Idem*, p. 17.

or by law of Parliament, or by both; to this proviso (at Lord Stanley's suggestion) these words were added —"unless the two parties shall in the meantime otherwise agree."

On the 17th of October, the protocol then agreed to was signed, and was in the following words:—

"The undersigned, Edward Henry Lord Stanley, Her Britannic Majesty's principal Secretary of State for Foreign Affairs, and Reverdy Johnson, Esquire, Envoy Extraordinary and Minister Plenipotentiary from the United States of America, being respectively authorised and empowered to place on record the bases on which her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America are prepared to close all further discussion with regard to the true direction of the line of water boundary between their respective possessions, as laid down in Article 1 of the treaty concluded between them on the 15th of June, 1846, have agreed upon the following protocol:—

"1. Whereas it was stipulated by Article 1 of the treaty concluded at Washington on the 15th of June, 1846, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America that the line of boundary between the territories of Her Britannic Majesty and those of the United States, from the point on the forty-ninth parallel of north latitude, up to which it has already been ascertained, should be continued westward along the said parallel of north latitude 'to the middle of the channel which separates the continent from Vancouver's Island,' and thence southerly through the middle of the said channel, and of Fuca Straits, to the Pacific Ocean; and whereas the commissioners appointed by the two high contracting parties to mark out that portion of the boundary which runs southerly through the middle of the channel aforesaid, have not been able to determine which is the true line contemplated by the treaty:

"It is agreed to refer to some friendly sovereign or state to determine the line which, according to the terms of the aforesaid treaty, runs southerly through the middle of the channel which separates the continent from Vancouver's Island, and of Fuca's Straits, to the Pacific Ocean; and, it is further agreed, that within three months after the exchange of the ratifications of any treaty that may hereafter be concluded for giving effect to the terms of this protocol, the contracting parties shall select some friendly sovereign or state to act as referee on the premises.

"2. If such sovereign or state should be unable to ascertain and determine the precise line intended by the words of the treaty, it is agreed that it shall be left to such sovereign or state to determine upon some line which, in the opinion of such sovereign or state will furnish an equitable solution of the difficulty, and will be the nearest approximation that can be made to an accurate construction of the words of the treaty.

"3. It is agreed that such sovereign or state shall be at liberty to call for the production of, and to consult, all the correspondence which has taken place between the British and American Governments on the matter at issue, and to weigh the testimony of the British and American negotiators of the treaty, as recorded in that correspondence, as to their intentions in framing the article in question; and such sovereign or state shall further be at liberty to call for the reports and correspondence, together with any documents, maps, or surveys bearing on the same, which have emanated from, or were considered by, the commissioners who have recently been employed by the two Governments to endeavour to ascertain the line of boundary as contemplated by the treaty, and to consider all evidence that either party may produce. But the referee shall not depart from the true meaning of the article as it stands, if he can deduce that meaning from the words of the article, those words having been agreed to by both parties, and having been inserted in a treaty certified by both Governments.

"4. The respective parties formally engage to consider the

decision of the referee, when given, final and conclusive, whether such decision shall be a positive decision as to the line of boundary intended by the true meaning of the words of Article 1 of the treaty of 1846; or whether the said referee, being unable to give such positive decision, shall give as a decision a line of boundary as the nearest approximation to an accurate construction of these words, and as furnishing an equitable solution of the difficulty; and such decision shall, without reserve, be carried into immediate effect by commissioners to be appointed for the purpose of marking out the line of boundary in accordance with such decision of the referee.

"5. It is understood that this agreement shall not go into operation, or have any effect, until the question of naturalisation now pending between the two Governments shall have been satisfactorily settled by treaty, or by law of Parliament, or by both, unless the two parties shall in the meantime otherwise agree." (1)

"Done at London, the 17th October, 1869.

"(Signed) "STANLEY,

"REVERDY JOHNSON."

On the 20th of October, 1868,(2) Mr. Johnson called upon Lord Stanley at the Foreign Office, and again proposed, with reference to the Alabama claims, that all the claims on both sides should be referred to the decision of commissioners, who should be, in equal numbers, British and American citizens. Lord Stanley again pointed out that the preferable course would be to choose an arbitrator, who should be the sovereign or president of some friendly state, and specially named the President of the Swiss Republic, or the King of Prussia. Lord Stanley also stated that

(1) Correspondence respecting the negotiations with the United States Government, presented to Parliament (1869), p. 9, No. 13.

(2) *Idem*, p. 10, No. 14.

though he still adhered to the position which he had taken up with reference to the alleged premature recognition of the Confederates as belligerents by Great Britain, yet that the order of reference might be so framed as to avoid any difficulty arising on this head.(1)

On the 10th of November a convention was signed by Lord Stanley and Mr. Johnson,(2) by which it was agreed to refer all claims respectively made upon the British Government on the part of citizens of the United States, and upon the Government of the United States on the part of British subjects, to four commissioners, of whom two should be chosen by the President of the United States and two by Her Majesty. It was also agreed that the commission should meet at London.

On the same day a solemn agreement, in the form of a protocol,(3) was signed by Lord Stanley and Mr. Johnson, binding their respective countries to refer the San Juan boundary question to the decision of the President of the Federal Council of the Swiss Republic. The agreement expressly stated that the parties thereto were respectively authorised and empowered by their Governments.

A copy of this agreement was on the same day forwarded to Mr. Thornton, British Minister at Washington.(4)

(1) Correspondence respecting the negotiations with the United States Government, presented to Parliament (1869), p. 10.
(2) *Idem*, p. 11.
(3) *Idem*, p. 14.
(4) *Idem*, p. 14.

It appears that objections were made in the United States to the Claims convention above mentioned.(1)

On the 27th of November, 1868, Mr. Seward wrote, with reference to the last-mentioned convention, to Mr. Reverdy Johnson, and, after suggesting certain amendments, stated as follows:(2)—

"It remains only to say that in view of the present situation of the Claims convention it is expedient to let the satisfactory settlement of the naturalisation question and the San Juan question rest in protocol. On the other hand, should Her Majesty's Government accept this amendment of the Claims convention herein proposed, you are authorised in that case to reduce the three or either two of these agreements to the forms of distinct conventions, and to sign and transmit them at once to this department to be laid before the President for ratification."

The reference of the San Juan boundary question to arbitration was thus rescinded, and made contingent upon the acceptance by Great Britain of the amendments to the Claims convention proposed by Mr. Seward.

Subsequently the amendments insisted on by Mr. Seward were accepted by Great Britain, and an amended convention(3) embodying such amendments was signed by Lord Clarendon (who had succeeded Lord Stanley at the Foreign Office) and by Mr. Reverdy Johnson, on the 14th of January, 1869. The fate of

(1) Correspondence respecting the negotiations with the United States Government, presented to Parliament (1869), pp. 15, 16.

(2) *Idem*, pp. 25, 29.

(3) *Idem*, p. 36.

this convention needs not to be told at length; it suffices to say that it was submitted, on the 18th of February, to the Senate Committee on Foreign Relations,[1] and on the recommendation of Mr. Sumner the committee decided on advising the Senate to refuse its sanction to the ratification of the convention.

On the date of the signing of the last-mentioned convention, Lord Clarendon and Mr. Reverdy Johnson signed a convention for referring to arbitration the question of the San Juan water boundary.

This convention was as follows:[2]—

"Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, being desirous to close all further discussion with regard to the true direction of the line of water boundary between their respective possessions, as laid down in Article I. of the Treaty concluded between them on the 15th of June, 1846, have resolved to conclude a Treaty for this purpose, and have named as their Plenipotentiaries, that is to say:—

"Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable George William Frederick, Earl of Clarendon, Baron Hyde of Hindon, a Peer of the United Kingdom, a Member of Her Britannic Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, Knight Grand Cross of the Most Honourable Order of the Bath, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs;

"And the President of the United States of America, Reverdy Johnson, Esquire, Envoy Extraordinary and Minister Plenipotentiary from the United States to Her Britannic Majesty;

(1) Correspondence respecting the negotiations with the United States Government, presented to Parliament (1869), p. 44, No. 31; p. 55, No. 33.

(2) *Idem*, p. 38.

"Who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:—

"Article I.—Whereas it was stipulated by Article I. of the Treaty concluded at Washington on the 15th of June, 1846, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, that the line of boundary between the territories of Her Britannic Majesty and those of the United States, from the point on the 49th parallel of north latitude, up to which it had already been ascertained, should be continued westward along the said parallel of north latitude 'to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel, and of Fuca's Straits, to the Pacific Ocean;' and whereas the Commissioners appointed by the two High Contracting Parties to mark out that portion of the boundary which runs southerly through the middle of the channel aforesaid, have not been able to determine which is the true line contemplated by the Treaty;

"The two High Contracting Parties agree to refer to the President of the Swiss Confederation to determine the line which, according to the terms of the aforesaid Treaty, runs southerly through the middle of the channel which separates the continent from Vancouver's Island, and of Fuca's Straits, to the Pacific Ocean.

"Article II.—If the Referee should be unable to ascertain and determine the precise line intended by the words of the Treaty, it is agreed that it shall be left to him to determine upon some line which, in his opinion, will furnish an equitable solution of the difficulty, and will be the nearest approximation that can be made to an accurate construction of the words of the Treaty.

"Article III.—It is agreed that the Referee shall be at liberty to call for the production of, and to consult, all the correspondence which has taken place between the British and American Governments on the matter at issue, and to weigh

the testimony of the British and American negotiators of the Treaty, as recorded in that correspondence, as to their intentions in framing the Article in question; and the Referee shall further be at liberty to call for the reports and correspondence, together with any documents, maps, or surveys bearing on the same, which have emanated from or were considered by the Commissioners who have recently been employed by the two Governments to endeavour to ascertain the line of boundary, as contemplated by the Treaty, and to consider all evidence that either of the High Contracting Parties may produce. But the Referee shall not depart from the true meaning of the Article as it stands, if he can deduce that meaning from the words of that Article, those words having been agreed to by both parties, and having been inserted in a Treaty ratified by both Governments.

"Article IV.—Should either Government deliver to the Referee a statement of its case, a copy thereof shall be at the same time communicated to the other Party, through its Representative in Switzerland, together with a copy of all papers or maps annexed to such statement. Each Government shall moreover furnish to the other, on application, a copy of any individually specified documents or maps in its own exclusive possession, relating to the matter at issue.

"Each Party shall be at liberty to draw up and lay before the Referee a final statement, if it think fit to do so, in reply to the case of the other Party, and a copy of such definitive statement shall be communicated by each Party to the other, in the same manner as aforesaid.

"The two High Contracting Parties engage to use their best exertions to place the whole of their respective case before the Referee within twelve months after the exchange of the ratifications of the present Treaty.

"Article V.—The Ministers or other public Agents of Great Britain and of the United States at Berne shall be considered as the Agents of their respective Governments to conduct their case before the Referee, who shall be requested to address all his communications and give all his notices to

such Ministers or other public Agents, whose Acts shall bind their Governments to and before the Referee on this matter.

"Article VI.—It shall be competent to the Referee to proceed in the said arbitration, and all matters relating thereto, as and when he shall see fit, either in person or by a person or persons named by him for that purpose; either with closed doors or in public sitting; in the presence or absence of both Agents, and either *vivâ voce* or by written discussion or otherwise.

"Article VII.—The Referee shall, if he thinks fit, appoint a Secretary, Registrar, or Clerk for the purposes of the proposed arbitration, at such rate of remuneration as he shall think proper. He shall be requested to deliver, together with his award, a statement of all the costs and expenses which he may have been put to in relation to this matter; and the amount thereof shall forthwith be repaid in two equal portions, one by each of the two Parties.

"Article VIII.—The Referee shall be requested to give his award in writing, as early as convenient after the whole case on each side shall have been laid before him, and to deliver one copy thereof, signed by him, to each of the said Agents.

"Article IX.—The respective Parties formally engage to consider the decision of the Referee, when given, as final and conclusive, whether such decision shall be a positive decision as to the line of boundary intended by the true meaning of the words of Article I. of the Treaty of 1846, or whether the said Referee, being unable to give such positive decision, shall give as a decision a line of boundary as the nearest approximation to an accurate construction of those words, and as furnishing an equitable solution of the difficulty; and such decision shall, without reserve, be carried into immediate effect by Commissioners to be appointed for the purpose of marking out the line of boundary, in accordance with such decision of the Referee.

"Article X.—The present Treaty shall be ratified by Her Britannic Majesty, and by the President of the United States

by and with the advice and consent of the Senate thereof, and the Ratifications shall be exchanged at London as soon as may be within twelve months from the date hereof.

"In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto their respective seals.

"Done at London, the fourteenth day of January, in the year of our Lord One thousand eight hundred and sixty-nine.

"(L.S.) CLARENDON.
"(L.S.) REVERDY JOHNSON."

In the meantime, on the 7th of December, 1868, Mr. Moore, Governor of Washington Territory, and other persons, twenty-three in number, chiefly officials connected with the government of the Territory, presented a memorial to the Senate "remonstrating against any recognition of the claims of Great Britain to the Haro Archipelago and to San Juan Island."

That memorial was as follows :(1)—

"Olympia, Washington Territory,
"December 7, 1868.

"To the Honourable the Senate of the United States.

"Your memorialists, having learned that a proposition had been made to submit the unfounded claims of Great Britain to the Haro Archipelago, and especially to San Juan Island, to the arbitration of some foreign power, respectfully protest against any recognition of those claims whatever. The terms of the treaty of 1846 fix the boundary line along the Canal de Haro. The object of the deflection of the line from the 49th parallel, being simply to give the whole of Vancouver's Island to Great Britain, can be exactly accomplished by this channel alone. The officers who negotiated and adopted the treaty, and the Senate by whom it was ratified, acted with the full understanding that the Canal de Haro was the boundary.

(1) Correspondence respecting the negotiations with the United States Government, presented to Parliament (1869), p. 42.

Having already conceded from the line of 54° 40′ to that of 49° for the sake of peace, neither the honour nor the interests of the United States will admit of further surrender of right.

"We therefore entreat your honourable body to consent to no protocol or convention that admits a doubt of our right to the line of the Canal de Haro, or renders possible a surrender of those islands.

"And your memorialists will ever pray, &c."

Subsequently the convention referring the San Juan question to arbitration was placed before the Senate,(1) and the Committee on Foreign Relations authorised Mr. Sumner to make a report thereon to the Senate, and to recommend that that body should sanction the ratification thereof by the President. Mr. Thornton afterwards had an interview with Mr. Fish, United States Secretary of State,(2) in the course of which the former expressed a hope that the Senate would proceed to give its sanction to the ratification by the President of the last-mentioned convention. Mr. Fish also expressed a hope that the question would be settled. Mr. Thornton reported this conversation to Lord Clarendon, who wrote in approval of the same.(3)

The convention was at length, in April last, brought before the Senate, and a long speech was made by Mr. Garrett Davis, a senator from Kentucky, recommending that its ratification should not be sanctioned. The main argument, if such it can be called, appears to have been,(4) that the right of the United States to

(1) Correspondence respecting the negotiations with the United States Government, presented to Parliament (1869), p. 44, No. 32.

(2) *Idem*, p. 50, No. 44.

(3) *Idem*, p. 50, No. 45.

(4) *Idem*, p. 57, No. 57.

the possession of the island of San Juan (and therefore, it is to be presumed, of the entire Haro Archipelago) was so extremely clear that the question was not one which ought to be submitted to arbitration.

It was, however, finally decided by the Senate that the further consideration of the convention, and the course to be pursued by them with reference thereto, should be deferred until the next session of that body, to open in December, 1869.

Whatever be the advantages (considered from an American point of view) of the proviso of the United States constitution which requires the assent of the Senate to the ratification of a treaty by the President, it is certain that other powers negotiating with the United States Government may, by that proviso, be placed in a most invidious and humiliating position.

To borrow an expression used by Mr. Goldwin Smith,[1] in his recent speech on the relations between America and England, it becomes necessary to look behind the credentials of a United States ambassador, and to inquire whether he has enough political support to warrant our treating with him. In the case of the Alabama convention, all that Great Britain could do was done with good will; the draft of the convention was framed at Washington, it was accepted by us, it was amended at the request of the United States Government, and, as Mr. Goldwin Smith remarked in the speech to which I have alluded, "when the whole process had been gone through, the treaty was kicked

[1] "The Relations between America and England, 1869," by Goldwin Smith.

out of doors with contumely, amid a burst of hostility and menace against Great Britain."

Possibly this may be the fate of the convention referring the San Juan water boundary question to arbitration. It is curious to consider that both the nations seem to be actuated by the same motive, the one in desiring, the other in doubting the advantage of arbitration. Great Britain believes her rights to be so clear that she does not fear the result of a fair arbitration; the people of the United States, on the other hand, seem to believe their right to the disputed territory to be so extremely clear that it ought not to be submitted to arbitration.[1]

[1] Correspondence respecting the negotiations with the United States Government, presented to Parliament (1869), p. 57, No. 57.

CHAPTER XVI.

I HAVE now laid before the public the evidence I have been able to collect upon the San Juan water boundary. By the information which I have reproduced, the public in this country are placed on an equal footing with the people of the United States, and will be able to take part in and form their own opinions upon any discussions which may arise with reference to that boundary. The time has passed when it was considered wise and politic to keep the public mind in ignorance upon imperial questions. The people should know "the whole truth," as well as "nothing but the truth," and I believe that the greater the intricacy, the greater the delicacy of a question arising between us and another power, the more important is it that the public mind should be put in possession of the facts connected therewith. All the care and skill of diplomacy are thrown away, if the minds of nations are kept asunder by an imperfect appreciation of the questions at issue between them. From the correspondence which has been printed it will have been seen that I have not over estimated the importance of the subject, or the interest which the controversy excites in the United States and in our American possessions. If Great Britain retains the Island of San Juan and the smaller

MAP

Showing the line of Boundary

between

THE UNITED STATES & BRITISH POSSESSIONS

From the point where the 49th Parallel of North Latitude strikes the Western Coast of the Continent "to the middle of the channel which separates the Continent from Vancouver's Island and thence Southerly through the middle of said channel &c. to Fuca's Straits, in accordance with Treaty of June 15th, 1846.

Scale of Statute Miles

0 5 10 15 20 25 30

Boundary line contemplated by the Treaty as shown by contemporaneous evidence.

Boundary line as claimed by the British Commissioner.

Boundary line proposed by the British Commissioner as a compromise between the Canal de Haro and Rosario Straits and rejected by the U. S. Commissioner as a violation of the Treaty.

Boundary line in accordance with the strict letter of the Treaty, and also with the object of the deflection from the 49th Parallel as stated by Lord Aberdeen in his instructions to Mr. Pakenham viz. "thus giving to Great Britain the Whole of Vancouver's island and its harbors."

Track of steamers plying between Victoria and Frasers river since discovery of gold.

Bowen & Co. Lithographers, Philadelphia

V A N C O U V E R

I S L A N D

H I N G T O N T E R R I T O R Y

FRASER RIVER

SEMIAHMOO BAY

PUGET SOUND

SALISH SEA

HARO STRAIT

SOUTH BANCH

HIGHLAND DISTRICT

LAKE OF THE WOODS

LA TORTA DISTRICT

SHAW ISLAND

JUAN ISLAND

LOPEZ ISLAND

ORCAS ISLAND

WHIDBEY ISLAND

ADMIRALTY INLET

Crescent Bay

Port Townsend

Port Discovery

Port Ludlow

Port Gamble

Port Orchard

Port Madison

Seattle

Tacoma

Steilacoom

Olympia

Nisqually

Pugets Mill

Bellingham Bay

Fort Bellingham

Fort Langley

Fort Hope

Fort Yale

Fort Kamloops

Fort Alexandria

Fort George

Fort Simpson

Fort Rupert

Fort Victoria

Fort Nisqually

Fort Colville

Fort Walla Walla

Fort Boise

Fort Hall

Fort Vancouver

Fort Umpqua

Fort Klamath

Fort Reading

Fort Jones

Fort Crook

Fort Lane

Fort Orford

Fort Ross

Fort Bodega

Fort Sutter

Fort Miller

Fort Tejon

Fort Yuma

Fort Mohave

Fort Defiance

Fort Union

Fort Laramie

Fort Pierre

Fort Benton

Fort Owen

Fort Hall

Fort Boise

Fort Walla Walla

Fort Colville

Fort Nisqually

Fort Victoria

Fort Rupert

Fort Simpson

Fort George

Fort Alexandria

Fort Kamloops

Fort Yale

Fort Hope

Fort Langley

Fort Bellingham

Fort Vancouver

Fort Umpqua

Fort Klamath

Fort Reading

Fort Jones

Fort Crook

Fort Lane

Fort Orford

Fort Ross

Fort Bodega

Fort Sutter

Fort Miller

Fort Tejon

Fort Yuma

Fort Mohave

Fort Defiance

Fort Union

Fort Laramie

Fort Pierre

Fort Benton

Fort Owen

124°

123°30'

123°

122°30'

49°30'

islands of the archipelago lying west of the compromise channel proposed by Lord Russell, together with Patos Island and the Sucia group, she will preserve her power upon the Pacific, and will not in any way interfere with or menace the harbours or seas which appertain to the United States.

If, on the other hand, these islands should become United States territory, the highway from the British possessions on the mainland will be commanded by and be at the mercy of that power, which will gain no other advantage by such possession, except that derived from the ownership of a few islands, the largest of which is some fifty-four square miles in extent.

It is impossible to believe that the United States would have so persistently advanced their alleged claims to the Haro Archipelago, unless influenced by some ulterior motives ; as for instance, by the wish to destroy our existence as a power on the Pacific.

It may be replied that the treaty of June, 1846, provides that the whole of the channel and straits between the continent and Vancouver's Island shall be free and open to both parties, but according to American statesmen that proviso would be annulled by a war between the two countries.

In the course of the Oregon controversy Mr. Buchanan[1] (subsequently President of the United States) declared that " the general rule of national law is that war terminates all subsisting treaties between

[1] Correspondence relative to the negotiation of disputed rights to the Oregon Territory, presented to both Houses of Parliament, &c. (1846), p. 36.

the belligerent powers," and he based this *dictum* on the practice of Great Britain herself. At the time when the proviso should be in force, it would, on this view, become *ipso facto* void. The straits leading from the Pacific to the extreme north of Queen Charlotte Sound would in such case be in fact a "*mare clausum*," so far as Great Britain is concerned.

Such a condition of affairs must inevitably force British Columbia into the United States federation; and the valuable district of the Saskatchewan, which has been described by Hinde, Palliser, Dr. Rae, and by Dr. Cheadle and myself, must, *ex necessitati rei*, follow the fortunes of British Columbia. Canada, excluded from the Pacific, and shut in on two sides by United States territory, must eventually follow the same course.

I have lately heard from Vancouver's Island that Mr. Seward has recently landed there on his way to and from Alaska. He openly, I am informed, expressed his belief that not only Vancouver's Island, but also British Columbia, would, ere long, become part of the Union. I may add that General Thomas, United States army, in his official report upon Alaska, states that its only value is to be found in the fact that its possession tends to hasten the annexation of the above-mentioned territories to the United States.

"ἀλλ' οὐκ εὐθέως τὸ τέλος."

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